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COMPUTERS

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The **Wake Forest Jurist** is published twice yearly by the Wake Forest School of Law of Wake Forest University. Its main purpose is to inform the friends and alumni of the Law School about activities and events of interest at the Law School, of recent important decisions by the courts of North Carolina and other jurisdictions, and news of the achievements and activities of fellow alumni. In this way the **Jurist** seeks to provide a service and a meaningful link between the School of Law and its alumni. Also, the magazine shall provide a forum for the creative talents of students, faculty and its alumni and an opportunity for legal writing by them. Opinions expressed and positions advocated herein are those of the authors and do not represent official policy of the School of Law.

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The **JURIST** *invites all interested students to participate in the Spring Issue (office located in Room 8).*

COVER PHOTO *94 year old John Joyner poses with the latest addition to his Asheville office. (photo by Dellinger)*

Pick up your pen
and send us your news.

Let us hear from you! Please take time to fill out the enclosed Alumni news form and mail it today.

The Dean's Column

Arthur Gaudio

Have you ever wanted to be just a little voyeuristic and take a peek at the future? In particular, have you ever wanted to see what the future of the law and legal education might look like? Then take a little time off and visit the Law School. You'll undoubtedly see some of it unfold right before your eyes.

The major topic for this issue of the Jurist is the place of technology, particularly computers, in the legal profession. However, Wake Forest's vision of the future doesn't end with technology. The faculty, the students, and even the mood which permeates the building carry an outlook of future presence. If computers are the hardware of the future, then the faculty and students are the software that will give it vitality. And it is at Wake Forest that this software is being developed.

Several years ago the Law School faculty and administration saw that computerization would play an important role in the future of legal practice and education. As a result they embarked on a program of acquiring computer technology and developing the ability to use it in the professional arena. Today Wake Forest ranks amongst the top five law schools nationally in the use of computers.

If you enter the law library and turn into the CLRIC (Computerized Legal Research and Instruction Center) you'll find 28 computers set up and ready for use. (You'll probably also find 28 students using them.)The CLRIC is the heart of instruction in computer usage given at the Law School. Every law student takes a mandatory course in computerized legal research on WESTLAW and LEXIS. With a little experience a student can find all of the cases, statutes and most of the literature on nearly any topic in the legal spectrum. A well-polished user can find these materials in a matter of minutes rather than the hours it used to take via digests, the Index to Legal Periodicals, and other cross references. When students have finished their research, these same computers are available for writing their memoranda.

Wake Forest's use of computers in legal education doesn't end with the CLRIC. Some faculty members bring computers into their classrooms to facilitate the instruction process and demonstrate ways of improving efficiency and performance for the practicing lawyer. For example, Professor Palmiter uses them in his Business Drafting course. His students use computers to prepare drafts of the documents they have been assigned. Then, in class, these drafts are displayed on a computer and critiqued and revised. Professor Herring uses computers in his Office Practice course to instruct his students in efficient practice methods. I use a computer in my Real Estate Finance course to demonstrate the use of electronic spreadsheets. These programs help students understand the effects of various business decisions and tax considerations on real estate investments.

Next you might walk into a faculty office. You're likely to find the professor's desk still strewn with books and other legal materials. However, you're also likely to find the professor busily working at his or her own personal computer. Through that computer each professor has access to WESTLAW and LEXIS. Those professors who are comfortable doing so can also draft their own articles or other writings on their computer. Some faculty also use various data bases to keep track of decisions and legal developments which they plan to incorporate into their writings or use in the classroom.

Computer and communication technology have even found their way into the CLE arena. Last year a regional program was offered covering recent developments in protecting, marketing, and distributing computer/communication technology. Professor Steele, our Law Librarian, also offered a short refresher course on computerized legal research to law students (both Wake Forest's and others) before they went away to summer clerkships.

Modern technology also takes on other forms. For example, the Law School has an extensive audio-visual department which can be a valuable aid in many different courses. Students in

Trial Practice are taped while they are conducting a trial. Afterward they, their fellow students, and their professor can review and critique the conduct of the trial. Professor Newman uses video taping in his Professional Responsibility course. Students interview a client (actor) and during the progress of the interview a problem of an ethical nature is presented. Afterward the professor, the student, and the rest of the class can review the tape and consider the student's response and other possible approaches to the problem.

With the approaching construction of the new Professional Center, the Law School faculty and administration

"If computers are the hardware of the future, then the faculty and the students are the software that will give it vitality. And it is at Wake Forest that this software is being developed."

will be facing important design decisions. The correct choices will enable us to take full advantage of this technology. Committees are already in place which are deliberating these questions. A Law School committee will also meet with a committee from the Babcock School to look at the integrated use of computers and other technology throughout the Center. The interrelationship of the two schools can open new doors for each school.

As I previously mentioned, any look at the future of legal education must also look at the Law School faculty. They are the catalyst which make the Law School's advances into the future possible.

With the adoption of the 440 plan five years ago, a change in the size of the faculty became necessary. Amongst other things, that plan called for a reduction in the student/faculty ratio and the reduction of all first year classes to a size of no more than 40 students. Both of these goals required an increase in the size of the faculty. With the addition of new faculty members there has also been an increase in their diversity. Their interests reach into just about every legal nook and cranny. This breadth has made the Law School much the better for the effort. We now have professors to teach important courses which were only items on our wish list a few years ago. In addition, some traditional courses can now be covered with more sections, thereby improving the legal educational process.

This depth in the faculty also creates a healthy diversity in its philosophical makeup. On your visit to the Law School you might turn a corner and find yourself in the middle of a vigorous debate on some legal, ethical or even political issue. An example of this healthy atmosphere could be seen last year when one of the legal fraternities sponsored a highly successful public debate between Professors Billings and Gerhardt on the issue of Judge Bork's nomination to the United States Supreme Court.

The increase in the size and breadth of the faculty also helps to maintain a long-standing Wake Forest tradition—a warm and friendly atmosphere between the Law School faculty and students. The tradition of an open door, and an eagerness to give extra help and time to students who ask for it, is an essential part of a Wake Forest legal education in the future as well as in the past. In this respect we have gone "back to the future."

The future of the legal profession is very much in the minds of the faculty and students at the Law School. The ethical considerations and constraints which should apply to the profession concern everyone. Wake Forest, like other law schools, has mandatory courses in Professional Responsibility. However, we will soon be facing considerations on how to improve legal education in this respect. One proposition is for the pervasive teaching of legal ethics. In other words, it raises the question of teaching ethical issues in substantive courses in ways which integrate the ethical problem with the actual subject matter of the course.

PILO, the student Public Interest Legal Organization, has been in the forefront of focusing student attention on public interest questions which face the legal profession. It recently sponsored a debate on the issue of mandatory pro bono work by all attorneys. It has also been active in seeking ways to lessen the financial burden on those graduates who wish to enter public interest legal work.

As I am sure you are aware, Wake Forest has been an advocate and

"I am convinced that Wake Forest, its faculty and students, as well as its many alumni and friends, have seen the future and can be proud that it is here."

innovative leader for continuing legal education for several years. We attempted to provide a service to members of the legal profession when little of it was otherwise available. With the advent of mandatory CLE the future has now arrived, and the Law School is fully prepared and ready to continue providing this service to the profession.

I hope that this little hypothetical excursion through the Law School carries the same excitement for you that it carries for me. I have always been optimistic about the future of the Law School. The beginning of a new millennium is barely 10 years away, but it bodes well. I am convinced that Wake Forest, its faculty and students, as well as its many alumni and friends, have seen the future and can be proud that it is here. If that discerning little 'possum, Pogo, were at Wake Forest today he might possibly be heard to say, "We have met the future, and it is us!"

The Editor's Page

To all alumni and friends of the law school, we at the Jurist are happy to update you on the recent events at Carswell Hall. It is always exciting to get mail from our readers all over the world updating us on their lives and inquiring about the law school's happenings.

Perhaps the most difficult challenge the editors face each semester is compacting the numerous law school events into approximately 32 pages. However, as an alumni magazine, the Jurist strives to meet the needs of its readership. All alumni are asked to send us the update card located in the back. Please let us hear from you.

Each semester the Jurist focuses on a particular area of interest to everyone associated with the law school. This issue features the use of computers and computer law, areas in which Wake Forest rightfully deserves recognition. While computer law is a relatively new and growing field, Wake Forest students, faculty, staff, and alumni have contributed immensely to its development and application. We all can be very proud of what the school has accomplished in this realm.

The computer has unquestionably led to increased productivity among lawyers. The opportunity to tap this resource has augmented the abilities of recent Wake Forest graduates and enhanced their marketability. The school's emphasis on computer training for each student in many different areas of the law has brought Wake Forest national recognition. Wake Forest has seen the advent of the computer in the law and has done all it can to prepare its students for the future.

I hope you enjoy the photographs and stories contained herein. Remember, this is your alumni magazine, so please let us hear from you with your news and story suggestions.

Robert Ruegger

The Jurist Staff, Fall 1988

WFU's CLRIC-Computer Legal Research and Instruction Center

The Computerized Legal Research and Instruction Center (CLRIC) is one reason why Wake Forest is becoming a face among the nation's top law schools. Currently Wake Forest ranks in the top five law schools in the country in providing computer access capabilities for its students.

The CLRIC is part of a larger Computer Services Department which is responsible for all academic, administrative and student computer programs at the law school. This includes administrative programs such as admissions, budgeting, class registration and grading, library administrative programs, placement, continuing legal education and alumni files as well as CLRIC programs. Most of these programs were written by Jean Hooks.

The Computer Service Department is staffed by two full time employees, Jean Hooks, director, and Sally Irvin, associate director, and one part-time employee, Rachel Hilbun. Mastering the variety of equipment, operating systems and software used plus managing the security and training with such a small staff and 500+ users is quite a challenge. Hooks' area of concentration is the mini-computer, administrative programs and the administration of the computer systems while Irvin specializes in the PC and legal applications, and Hilbun in day-to-day operations and backup.

Today, the law school has more than 30 computer workstations for student use, which is about a 15:1 ratio. In addition, both the Law Review and Moot Court offices have computers, all administrative and support staff have computers and all professors who have requested a computer have one.

3L Jon Fullenwider doing research on LEXIS. (photo by Gardner)

The goal of the CLRIC is to develop computer competency as well as computer literacy. To achieve this goal the CLRIC offers its users many different capabilities that range from allowing students to access WESTLAW and LEXIS to word processing to providing computer-assisted legal instruction.

The CLRIC not only offers programs that help a user research or learn the law but offers practice programs such as TABS and TIMESLIPS, which are automated law office programs. The law office management programs will be helpful to the student who is going to open his own office as well as the student who wants to learn in advance the system a firm uses. "More and more, our students are being asked to automate the law offices they are going to work for because they generally have more computer knowledge than other employees already in the firm have," Irvin explained. Currently, these programs are being used in the Law Office Practice class but may also be used by any student in the CLRIC.

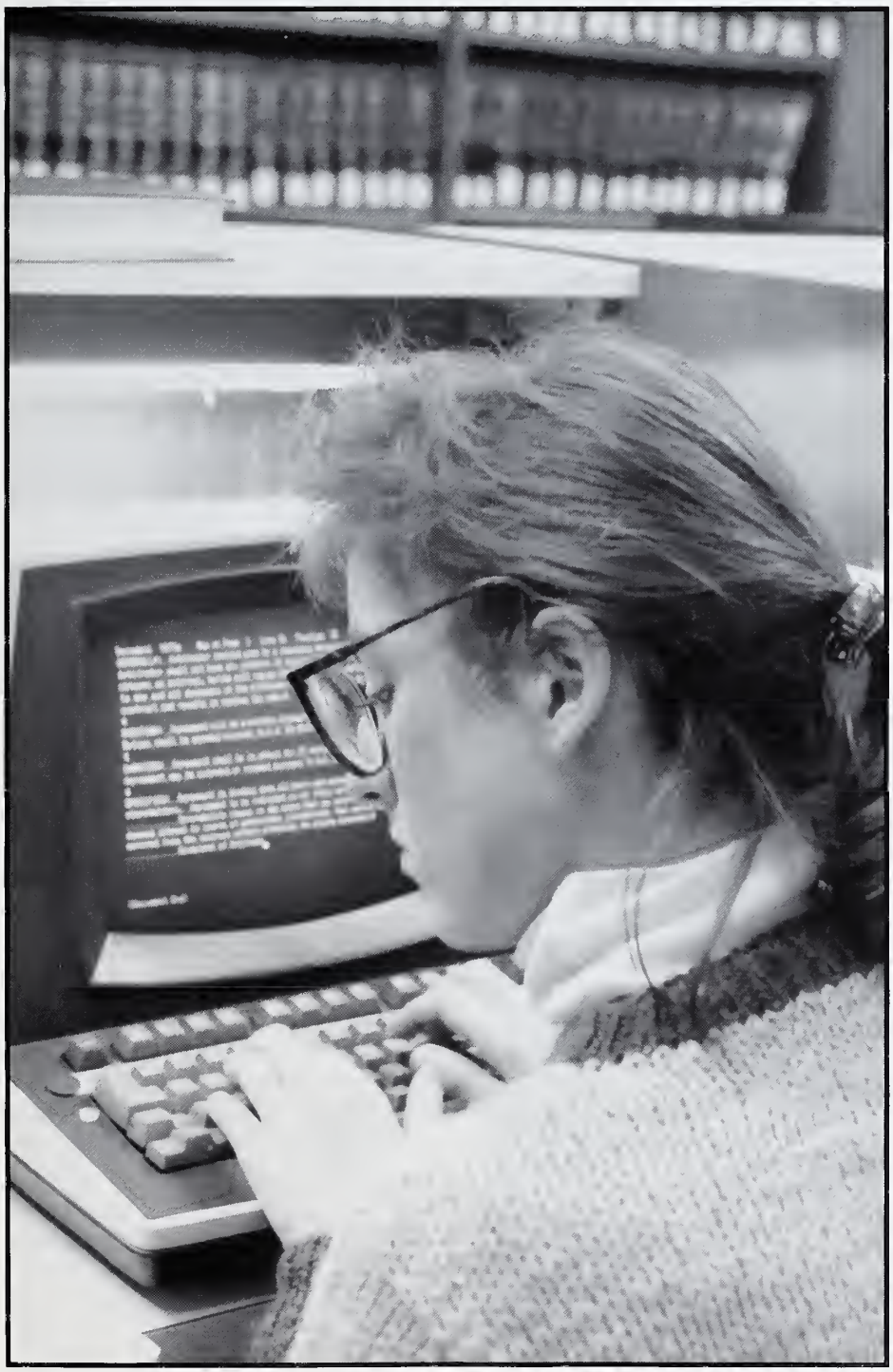
The CLRIC supports two of the most popular word processing packages —Wang Word Processing on the PC and VS, and WordPerfect for the PC. All CLRIC users have access to the available programs and may ask for assistance from a student computer assistant who is on duty at all times.

The computer assistants are trained on both the mini-computer and the personal computers and are competent

in most of the available software. Regular training classes taught by Hooks and Irvin are also offered in a number of areas. These are supplemented by computer based training exercises for those who prefer self-paced learning. This fall a special LEXIS Learning Center was held for four weeks. Many students and faculty took advantage of the classes offered in both LEXIS and NEXIS taught by a national trainer (provided by LEXIS) and Computer Services personnel.

The Computer Services Department offers database programs to the faculty and students. These programs allow the users to create files that suit their own needs. Some professors find this helpful in storing materials for class while others use this capability much more extensively for researching since files created through this program can be searched in the same way WESTLAW or LEXIS is searched.

Jean Hooks



2L Michelle Davis using the word processor in the CLRIC. (photo by Gardner)

After Wake Forest Law School accepted its first blind student, Tamara Rorie, the Computer Services Department went to work on the CLRIC to modify the computer software and physical facilities to meet her needs. Two of its workstations can be plugged into a speech synthesizer which reads what is on the screen to Rorie. Rorie can also build a file on a disk which can be taken home to a braille printer. This allows her to have a full range of access and enables her to do all of her research and class preparation on her own. WESTLAW, LEXIS and the company who makes the speech synthesizer were very helpful in this effort. As a result, other blind students are considering Wake Forest as a place to obtain their legal education.

Choosing computer packages that best suit the needs of the CLRIC users takes hundreds of hours of research and testing. The Computer Services staff try to keep abreast of what is available by attending seminars and reading publications. Once Hooks and Irvin decide that a new package is appropriate and needed, as well as compatible with the CLRIC system, they must customize the package to meet user needs. For example, the installation of an X.25 telephone line and software required weeks of experimentation and coordination. Then the Student Computer Assistants had to be trained before the software could be

released to the students. Now Wake Forest has a unique capability that no other law school and only a few of the largest law firms have: the ability to allow up to sixteen students to access WESTLAW and LEXIS simultaneously. The program is so new to WESTLAW that we are serving as a beta test site for them and our students will assist in debugging their software.

Wake Forest does not just use computer-assisted legal instructional packages created by others, but creates its own packages as well. Wake Forest is part of a group that creates Computer-Assisted Legal Instruction (CALI) exercises and provides these exercises to other law schools. CALI exercises created by professors at Wake Forest include Coney Island: A Game of Discovery (Civil Procedure) written by Professor Ronald Wright, Homicide—the States of Mind (Criminal Law) written by Vice-President Kenneth Zick, and Corporations-Fundamental Transactions written by Professor Alan Palmiter. The Corporations and Homicide exercises were programmed by Sally Irvin.

The CLRIC recently installed a new Placement Data Base which allows users to do an electronic search of 6500 law firms (a smaller on-line version of Martindale-Hubbell). Currently, the program allows a user to do an automatic list search for law firms that meet certain requirements that the user deems important. The program also identifies firms that interview on campus, firms that accept resumes and firms that currently employ Wake Forest alumni. The file of law firms will expand as the Placement Office expands.

2L Ann Potter tests her knowledge of evidence while using CALI Evidence exercises. (photo by Gardner)

CLRIC student assistant John Allen demonstrates the Interactive Video laser disc. (photo by Gardner)

Wake Forest's Computer Service Department believes that, if used properly, computers can be a huge asset to all attorneys, and the need for computers as well as computer capabilities will continue to grow well into the future. Wake Forest University School of Law has made a significant commitment to computer technology. Because of the dedication to this commitment, Wake Forest is continuing to lead the way in computer technology among law schools across the country.

By Donna Colberg, a Second-Year Student from Parkersburg, W. VA.

Computer Law Class

In an effort to maintain an up-to-date curriculum, the law school administration instituted a computer law class which began in the spring of 1988. The scheduling of the computer law class was in reaction to the tremendous growth in computer use and software application throughout the business world.

Chip Cooper

To teach the new computer law class, the administration recruited Frederick L. "Chip" Cooper, a 1971 Wake Forest Law School graduate. Cooper is a nationally known leader in the computer law field and has written a book on computer law. Along with teaching the computer law class, Cooper is a partner with the Atlanta-based firm of Hurt, Richardson, Garner, Todd & Cadenhead.

Cooper began his legal career as a corporate attorney in a large Atlanta law firm. His background in computer technology led to several assignments in computer-related cases. He currently specializes in computer law. His practice includes contracting for the acquisition, marketing and application of computer software programs, protecting proprietary rights in software and other previously unforeseen legal issues which commonly arise.

For the computer law class, Cooper's main objective was to "acquaint students with applying existing legal principles with current technology by looking at existing case law, applying legal principles from related fields of law and predicting future trends. Because there is very little case law or legal principles which directly apply to computer law issues, a lawyer can be "very creative when determining a course of action for a particular computer law issue. This lack of blackletter law makes the computer field very challenging and nerve-racking, but at the same time, a lot of fun," Cooper said.

Computer-related issues affect almost every business, from the Fortune 500 companies to the small businesses. Much of the computer law field involves software application. According to Cooper, "Companies creating software products must protect their software, because software is so expensive to create and apply but very inexpensive and easy to copy." Consequently, it becomes very important to protect your proprietary rights in any software programs you create.

Reaction to the first computer law class is very favorable. Edward Shanley, a third-year law student from North Attleboro, MA, enjoyed the seminar style in which Cooper taught the class.

Ed Shanley

"The seminar style made the class move along and encouraged students to participate in class." Along with computer law, the class learned how the computer field crosses over into corporate law, contract law and marketing.

The administration plans to offer the course every other spring so that every student will have an opportunity to take the class during their three years at Wake Forest.

By Ken Brosnahan, a Third-Year Student from York, PA.

One of the 28 terminals available in the CLRIC for student use. (photo by Dellinger)

Interactive Video: WFU Law Out Front

Wake Forest University Law School has, in recent years, shown that it is a leading producer of appellate advocates. What may not be readily apparent is the law school's "cutting edge" position in making computer technology both practical and desirable for the legal community.

Thanks to the support of the law school administration and the talents of faculty and staff, Wake Forest Law School stands at the forefront of interactive video production.

It has been just over three years since Wake Forest entered into the world of interactive video. Following an American Bar Association Convention, Ken Zick, the law school's former Associate Dean for Academic Affairs, currently Vice President for Student Life & Instructional Resources, and Sally Irvin, the Associate Director of Computer Services for the law school, visited Harvard University to actually see an interactive video program. What they saw was the combination of laser disc technology and a special computer program which produced an effective teaching device for lawyer and student alike.

The first Wake Forest interactive video was produced through a joint effort with Harvard Law School and is designed to help the user become more effective at making and supporting objections in an actual courtroom setting. The process for creating this program began with a written script which was performed by actual lawyers and law school administrators. Because Irvin has a master's degree in instructional television and was a public television producer, she is particularly suited for recording the performance on video tape. The finished video tape was pressed into a laser disc, and a computer program was then written to coincide with the disc.

The result of all this work is an interactive video program which puts its user in the position of an attorney who objects to different facets of the direct examination of a witness in a civil lawsuit. Upon making an objection the video stops, and the user must choose the basis of his or her objection from a menu displayed on a monitor. The objection is then overruled or sustained with an explanation provided by the computer program. This interactive video program takes the attorney or student out of a pure academic environment but allows him or her to make mistakes, which would otherwise be fatal in court, without suffering the consequences.

Currently, Jean Hooks, Director of Computer Services & Administration, Irvin and Carol Anderson (Associate Clinical Professor at Wake Forest Law School) are completing a new interactive video which emphasizes the "soft skills" of practicing law. The program concentrates on the interviewing and counselling of a female client seeking the dissolution of her marriage. This is the first program to concentrate on "soft skills" such as negotiation and dispute resolution and also features some of the legal and tax issues involved in marital dissolution.

This new interactive video is nearing completion and is totally a Wake Forest production. The video and program will be distributed by Lawyer's Cooperative Publishing Company and its success is promising. Law firms around the country have already expressed an interest in improving "soft skills," and the new program should meet with ready demand. Students at Wake Forest and other law schools will also have access to the program.

All of those involved in keeping Wake Forest out front in interactive video production should be commended, for their continued success is the law school's continued success.

By Robert B. Richbourg, a Third-Year Student from Nashville, GA.

Sally Irvin displays the Interactive Video. (photo by Gardner)

Corporations

With the push of a button, students can test their skills at creating capital structures for corporations including financing the corporation and distributing corporate funds. For the past year, Assistant Professor Alan Palmiter has used computer programs created by the Center for Computer Assisted Learning Instruction (CALI) to teach students how to develop capital structures.

CALI, which is affiliated with Harvard Law School, creates programs that help students master the technical aspects of developing capital structures that are difficult to teach in class because they require working through problems with paper and pencil. Using the computer, however, creates a one-on-one dialogue in which a student can answer a series of questions asked by the computer and receive reinforcement for his answers. "The computer creates the opportunity to replicate dialogue which frees class time and makes learning time more personalized," Palmiter explained.

The important thing is the process of working through a problem and seeing things in your own way," says Palmiter. "One of the most effective ways to teach is to catch people who have said something wrong and redirect that thought. Computers can achieve this goal on an individual basis and, therefore, personalize the learning experience," says Palmiter. "That is the counterintuitive notion that drives CALI," Palmiter added.

Wake Forest students also will be using computers to master fundamental corporate transactions. Palmiter is developing a computer program that will help students master statutory requirements for corporate mergers, stock purchases and shareholder transactions. The program challenges students to act as legal counsel for a corporation that needs advice in areas such as mergers, sale of assets and purchase of stock. The goal of the program is to simplify the process of gaining a working knowledge of the statutes.

By Mary Levenson, a Second-Year Student from Oxford, NC.

CLRIC Student Assistant Rick Watts browses through a computer manual. (photo by Dellinger)

Legal Bibliography

One of the goals of legal education is to provide opportunities for students to become computer-oriented. At Wake Forest, this commitment begins with first-year students. According to Thomas Steele, Director of Library Services and Professor of Legal Research and Writing, the goal of the first-year training is to provide the students with a greater awareness of computers so they are more comfortable with computer use.

Tom Steele

Wake Forest uses an integrated approach in teaching LEXIS and WESTLAW in conjunction with first year legal research and writing courses. As Steele explained, computer-assisted legal research (CALR) is still primitive and students must use manual and computer-assisted research conjunctively. The students are taught to integrate all research skills. Aside from teaching legal research and writing at Wake Forest, Steele conducts seminars to teach professors around the country how to integrate CALR into their legal research and writing rather than having it a distinct and separate aspect.

As it stands, first-year students begin computer instruction in the spring term as a requisite for legal research and writing. The students are given classroom as well as hands-on-training for LEXIS and WESTLAW and must pass a competency test for certification. Plans are underway to increase first year access by starting the first-year students in the fall term and continuing with weekly sessions throughout the year. "This will," says Steele, "further the goal of totally integrating computers as part of a problem solving process."

By Anne Shaw.

John Allen and the SAS Institute

Besides the extensive involvement that the students at the law school have with computers in the course of their studies, some students have had direct contact with the computer industry through summer employment. One of these computer-oriented persons is

John Allen

John C. Allen IV, a third-year student from Chicago, who worked this past summer at the Statistical Analysis Software Institute in Cary, North Carolina.

Allen, 25, graduated from Hampton Institute in Hampton, Virginia with a B.S. in English/Technical Writing and has been working with computers since the age of 11. He used mini-computers throughout high school and after graduation from college, Allen helped install a PC system in an architectural firm.

Upon arrival at law school, he worked in the Wake Forest Micro-Computer Center, helping to install a computer facility in the Babcock School of Business and installing PC's in various professors' offices. In addition to this experience in the field, Allen also presently works in the law school computer center (the CLRIC) as a student assistant.

Allen used this broad computer background to land a job as an associate marketing counsel with the SAS Institute during the summer of 1988. The SAS Institute is an international corporation with its world headquarters in Cary, North Carolina and offices in numerous foreign countries. The Institute began originally as a project connected with North Carolina State University with Dr. James B. Goodnight as director. The University cut funds for the project and Goodnight continued the Institute as an independent enterprise which has evolved into an international business concern with over 51,000 clients worldwide.

The Institute develops and distributes mathematically-based software dealing with statistical analysis and other topics. Among its clients are governments, both foreign and domestic, stock brokerages, colleges and universities and various companies, national and international.

Allen's position in the legal counsel department of the marketing division led him to be involved in the Institute's project to summarize the Federal Acquisition Regulations (FAR) clauses in federal government contracts so the text would be understandable to the laymen who must deal with such government procurement documents. He helped compile the summarizations in a manual which was then programmed into a computerized form which could be kept current and easily accessible to those government officials and contractors in need of the clauses and summarizations. Allen's experience in the CLRIC at Wake Forest helped him this past summer in researching court interpretations through WESTLAW and LEXIS concerning the FAR clauses that he summarized. In addition to the FAR project, Allen also worked on an international export license that the Institute now has with Hungary and an international distributorship agreement.

Allen said that he enjoyed his stay at the SAS Institute and that computers definitely figure into his future plans as an attorney. He has taken the computer law class offered at Wake Forest taught by Chip Cooper and would like to pursue that area as a career. When asked if interviewers are interested in his computer background, Allen responded that they are, but he doubts that they would know how to put his skills to best use in a typical law firm setting. Allen added that computer literacy is a plus in the job market but not yet a necessity.

However, when asked about the computer's place in the future of the legal profession, he said that they will become a necessity soon, especially in the areas of efficient billing, legal research and secretarial word processing as the old system of typewriters, erasable bond paper and endless library research hours become obsolete.

By Dean Hollandsworth, a Third-Year Student from Greensboro, NC

John Allen accesses WESTLAW to locate a recent decision. (photo by Gardner)

Rorie Finds Success in Law School Despite Being Blind

Tamara Rorie is your typical first-year law student. Each weekday she climbs out of bed and prepares to face another day of engrossing, and at times confusing, law school. She listens attentively, and participates actively in class. After classes, she returns home to put in several more hours completing assignments for the following day, just as any other student would. Yet, Tamara is different from your typical law school student in one respect—Tamara is blind.

Tamara is a unique individual, and admits so herself. "I have always been the type of person to look for challenges," she says. "I'm not afraid of a little hard work, and I see law school as another challenge to be conquered."

Tamara, 26, has attended regular public schools throughout her life. She graduated from Garringer High School in Charlotte, and then matriculated at the University of North Carolina at Chapel Hill. While at UNC, Tamara majored in political science in order to prepare herself for a career in the legal profession. "I enjoyed UNC," she relates, "but it was just a bit too big for me to feel comfortable about getting around easily." After graduation from North Carolina, Tamara was accepted to Wake Forest Law School, as a member of the Class of 1991.

Tamara picked Wake Forest over several other law schools primarily because of the emphasis placed on computers as an aid to legal research that is present at Wake Forest. "The law school here has a good computer department, and I am very interested in working with computers. So far, I have worked with WESTLAW, LEXIS in the CLRIC, and I really enjoy it. The computers allow me to print out certain cases in Braille, which is of tremendous benefit to me in preparing for classes. I think that the computer aspect of my legal education is one of the few areas where I am on an equal level with the other students. I can use the computer without any special arrangements, and it gives me a lot of satisfaction to be able to use the computers to help me keep up with my assignments."

When Tamara is asked why she chose the field of law, she is very straightforward in her answer. "I want to help other people. I know that sounds corny, but it's the truth. Law is an area where a lot of misunderstanding occurs. People have a vague notion of what their rights are, yet they are often afraid to stand up for their rights because they don't feel like they know the game (of law). I want to be an advocate for such people, to help insure that they do not fear the judicial system simply because they don't understand it. Many people get down because of our complex system, and I want to help them understand and use the system to their advantage. I really feel my career lies in public interest law. It's where I think I can do the most good."

Tamara Rorie

Tamara is treated just like any other student at the law school. She is expected to be on time for classes, and to be prepared to discuss the material being presented that day. By and large, Tamara feels that she is doing well. There are, however, problems with being a blind law student. "The biggest problem I have is making sure my readers (those who read cases to her when they are not available in Braille) are available when I need them. This is sometimes difficult to do because my readers are law students themselves, and there are times when they have assignments due and simply can't make it."

Whether she knows it or not, Tamara is something of an inspiration to her fellow students. The student body has become used to seeing Tamara and her guide dog, Jolly, coming and going in the corridors of Carswell Hall. "She's really something," says a fellow first-year law student. "There are days when I feel so sorry for myself because of my workload. Then, I see Tamara walking down the hallway and I realize all the time and effort she must put into her education. It really makes me respect her, and want to push myself as well." Tamara denies that she is some sort of role-model or hero. "I'm just your average law student, except that I am blind." While Tamara may hold this modest view of herself, there are many students at the Wake Forest School of Law who would readily call her an inspiration, and yes, corny as it sounds, a hero.

"I have always been the type of person to look for challenges. I'm not afraid of a little hard work, and I see law school as another challenge to be conquered."

By Michael Beal, a First-Year Student from Mount Airy, NC.

Wright Joins Wake Forest Law Faculty

In his first year of law instruction, Professor Ronald F. Wright tempers his teaching of law skills with one major objective: "I see my role overall is to make sure that people here get no worse as people."

"Of course, you're here to gain skills, but I hope in the process you don't become a worse person. Maybe I'll even help you make yourself a better person."

To that end, Wright encourages students to question what he believes to be corrosive influences in legal education and practice.

"I believe an unblinking acceptance of the adversary system is corrosive to morality. If you really believe it doesn't matter which side you take and that everything will automatically work out in the end as long as you do it in court, I think you've got a real problem."

Wright does not endorse getting rid of the adversary system. Rather, he believes students should realize that their choice of clients will make a difference in the world.

"Your vision of what the world should look like should influence what clients you are going to take. Pick a job where you are pretty happy fighting for the people you are fighting for."

Professor Wright spent his undergraduate years at the College of William and Mary. After graduating from Yale University Law School in 1984, Wright clerked for a federal circuit court judge for a year before going to work in the Justice Department's Antitrust Division, where he worked for three years prosecuting white-collar criminals.

"Edwin Meese was my ultimate boss. Rumors were flying that I worked directly for Edwin Meese," he chuckled. "That's just not true."

Based in the Atlanta field office, Wright's work for the Justice Department involved prosecuting persons who had violated the antitrust laws, along with those who had made false statements to the government, had lied to grand juries, or had destroyed grand jury documents. "Normally these were presidents of companies," he added.

From there, Wright decided he would like to teach, and selected Wake Forest from a field of law schools in the region. "I wanted to teach at an above-average quality law school in the southeast," stated Wright.

Convenience also helped Wright to make his choice. His wife of six years, Amy, has family in northern Virginia, and his family still resides in Atlanta, so Winston-Salem was a good halfway point for him. He and Amy find Winston-Salem to be a pleasant community and a good place to rear their 17 month-old son, Drew.

In addition to teaching at Wake Forest, Wright is currently working on a study for the Center for Disease Control in Atlanta. Certain medical review boards are becoming hindered in the gathering of information by the threat of medical malpractice suits, and Wright is attempting to discern the actual legal risks involved.

He is also working on computer games, one of which is called "Coney Island—A Game of Discovery." Wright first started the game, designed to teach students federal rules of civil procedure discovery rules, as a third-year law student with the help of a professor and another student. Every year he updates this game, to which Wake Forest students have access, and this year hopes to add another exercise.

Wright may also have time to commence work on a third project, a paper on federal sentencing guidelines. "Topics for memos have to come from somewhere," he says. Professor Wright's first year legal research class is currently working on a memo covering the federal sentencing guidelines, having just completed one concerning antitrust laws.

Professor Ronald Wright in his office. (photo by Dellinger)

In comparing Yale to Wake Forest, Wright commented that Yale is an extremely competitive place. "The edge of competition isn't here. These are basically nice people. Students get along here.

"At Yale," he adds, "students are not given grades the first semester in hopes of fostering a less-competitive atmosphere.

"Here at Wake, even with grades given right at the start, there isn't the mean edge of competition. I like that."

By Thomas Daley, a First-Year Student from Chicago.

Professional Center Update

Site of the new Professional Center. (photo by Dellinger)

The rumor is now a reality; the days of the study of law in Carswell Hall are numbered. In response to crowded hallways, crowded classrooms and crowded library shelves, the Wake Forest School of Law is going to move. Its new home will be in a "Professional Center," which will house both the Law School and the Babcock Graduate School of Management.

The Professional Center will be located on the east side of campus, between the large parking lot across from the tennis courts (a.k.a. "the boonies") and the water tower. The site was determined after considering many locations, including the athletic practice field, various intramural sports fields and even the RJR World Headquarters building, donated to the University by RJR-Nabisco in 1987. After the move, Carswell and neighboring Babcock Hall will be used by the undergraduate school.

Associate Dean, Academic Affairs, Arthur R. Gaudio explained that the design for the Professional Center is still uncertain. However, the Architectural Screening Committee of which he is a member will select an architect by the end of the fall 1988 semester. With 1989 reserved for drafting plans and ironing out the specifics of the project, Gaudio looks for the ground breaking to take place in late 1989 or early 1990. While "Murphy's Law" often seems to be the controlling rule in the construction world, Gaudio hopes that the Professional Center will be completed by the end of 1991.

One thing seems certain about the Center; it will be unique to Wake Forest. University President Thomas K. Hearn, Jr. anticipates a "signature building" which will "evidence the importance of the professional schools to Wake Forest." Gaudio echoes Hearn's sentiments, noting that to his knowledge, Wake Forest will be the only law school with this type of arrangement. The Professional Center will be "something we can offer that others won't have," he observed.

Although the physical layout of the Center is yet to be determined, some basic aspects of how the Law School and the Babcock School's joint occupancy will work are clear. There will be some instructional space that will be strictly law, some that will be strictly business, and some that will be shared, probably in the form of business classes at night in rooms used by the Law School during the day. Law students and faculty will have space distinctly their own (organizational, offices, etc.), but may share some lounge areas with Babcock students and faculty. While this means that the Law School may be sharing a bit more than a roof with the Babcock School, Gaudio is quick to point out that there will be no merger of identities. He emphatically maintains that there will be a separate law school. The Law School and the Babcock School will have a symbiotic relationship which will help both schools, says Gaudio, "but we will maintain a separate existence."

The Professional Center will bring with it a substantial increase in the number and variety of classrooms at the Law School, says Gaudio. Although the numbers cannot be pinned down until the plans are drawn, he predicts about four rooms seating 40 students, six to eight rooms seating 20-30 students and several rooms seating 80-100 students. These classrooms will be in addition to whatever facilities are available for joint law and business use.

True to Wake Forest's commitment to excellence in oral advocacy, plans for two courtrooms are already under way. As is true with the classrooms, the emphasis here will be on increased quality as well as quantity. For example, the courtrooms will have video cameras dispersed throughout, and will thus be able to capture the reactions of judge, jury, witness and advocate in a manner currently not possible. The videotaping will be monitored from a central location, from which it can then be projected into the classrooms via their video terminals.

While the classrooms and courtrooms promise to be impressive, the preliminary plans for the Professional Center acknowledge that most law students' second home is the library. As there is often no more room for a student to study than there is for a book to find shelf space in our current library, the joint Law/Babcock library promises to be two to three times the size of the schools' present libraries combined. Besides allowing the library's collection room to expand, this should also allow carrell space for every student.

The construction of the Professional Center is the most significant development in the history of the Law School since its move to Winston-Salem 32 years ago. Students, faculty and alumni alike should be excited at the prospect and justifiably proud of our Law School as it prepares to move into the 21st century.

By David C. Wagoner, a Second-Year Student from Charlottesville, VA.

Wake Forest Hosts Presidential Debate

This year, Wake Forest University held the first presidential debate of the 1988 campaign. George Bush and Michael Dukakis argued the issues of their respective positions while a substantial portion of the United States and other countries watched on television. All the attention surrounding the candidates put Wake Forest in the center of national attention.

Utility crews worked feverishly in the weeks preceding the debate in anticipation of the massive media crunch. Miles of cable were needed and innumerable telephones were hooked up to facilitate the press. The Pit was converted from a cafeteria to a press center for the over 2,000 print journalists on hand.

The Wait Chapel parking lot became a trailer park for the national television networks' trucks for several days both before and after the debate. Scores of local television stations' mobile news units dotted the campus as the time for the debate date approached.

Security on campus began to tighten several days before the debate. Unmarked cars with uniformed officers regularly cruised the campus as students tried to go about their normal routines.

Campus security during the weekend of the debate was extremely tight. The only campus entrance open to students on the day of the debate was the Silas Creek Parkway/Reynolda Road intersection. Even there, several security points had to be passed before students could arrive at Carswell Hall.

Perhaps the most disappointing fact about the debate was the ticket situation. Tickets to the debate were extremely scarce. A vast majority of the debate passes were allotted by the Commission on Presidential Debates to the Republican and Democratic national parties. The few tickets which the university had were distributed through a campus-wide lottery. Only a handful of law students were able to attend, a fact which became known only hours before the debate began.

After the debate, Bush supporters gathered at the Dixie Classic Fairgrounds for a victory rally. Democrats congregated at the Benton Convention Center to likewise fete their candidate.

While the debate is clearly of high political significance, its importance to the short and long term future of Wake Forest is not yet fully known. Student feelings on the subject are mixed with an almost equal split between those who think the debate will have a lasting impact on the university and those who believe that interest in Wake Forest may pick up for a short time, but that people will soon forget. One 2L, who asked to remain anonymous, said, "I think people will be more likely to apply to Wake Forest University because of the debate this year, but by next year I doubt that the debate will influence anyone."

So far the information seems to indicate that the debate has helped Wake Forest. According to Linda Michalski, director of professional and public relations, applications for admission to the law school are more than 50 percent higher than they were last year at this time. How much of the increase can be attributed to the debate is not known, but it clearly has played a role in the increased number of students wishing to study at Wake Forest.

As Melanie Nutt, director of Admissions and Financial Aid, has noted, the increased number of applications for admission allows Wake Forest to be more selective in the students it accepts for enrollment. This should enable Wake Forest to continue to improve its national image and recognition.

By Karen Freisen, a Second-Year Student from Wasilla, AK.

Presidential candidates George Bush and Michael Dukakis congratulate each other following debate in Wait Chapel.

Ann Potter Wins Stanley Competition

Stanley Competition winner Ann Potter receives congratulations following her triumph. (photo by Allen)

The 17th Annual Edwin M. Stanley Moot Court Competition continued the Stanley tradition of presenting its participants with constitutional questions about relevant current events. Ann Potter was the winner of this year's competition. Em Thompson took the James C. Berkowitz Award for best oralist. The best brief award went to Mary Levenson.

This year's problem concerned a university professor who contracted the AIDS virus while conducting AIDS research. When the university curtailed the professor's research activities, citing public health reasons, she publicly criticized the university's allocation of research monies.

The Stanley participants were faced with two issues. The first was whether an individual testing seropositive for H.I.V. antibodies but displaying no physical impairment can be restricted in her employment activities to reduce the risk of contagion. The second was whether an employee of a state university may be dismissed for publicly airing criticisms of the school's research funding policies.

This year sixty-three students participated in the competition, which began September 21st. The students had four weeks to prepare their briefs and oral arguments.

The final arguments of the competition were held in the law school courtroom on November 4th. The arguments were followed by a reception at the Graylyn Conference Center for the participants and guests. Judges for the final round were The Honorable Gilbert S. Merritt, United States Court of Appeals for the 6th Circuit; The Honorable Richard D. Cudahy, United States Court of Appeals for the 7th Circuit; The Honorable Louis B. Meyer, North Carolina Supreme Court; The Honorable Henry E. Frye, North Carolina Supreme Court; and Professor J. Wilson Parker from the Wake Forest University School of Law.

Jennifer Baucom, co-chairperson of this year's Stanley Competition, praised both the participants and the organizers of this competition. Baucom commented that this year's problem and bench brief, written and researched by Linda Shea and Joyce Terres over the summer, were outstanding. Baucom said that: "Hopefully, the national recognition Wake Forest Moot Court receives will encourage more students to participate and further increase the quality of the Stanley Competition in the future."

Stanley Cup runner-up, Alan Powell. (photo by Allen)

By Mary Nolan, a Second-Year student from Bethesda, MD.

Bradley Wins Trial Bar Competition

Rick Bradley rises to address the court. (photo by Gunter)

On Friday, October 7, 1988, the courtroom in Carswell Hall bustled with first year students, as well as interested 2Ls and 3Ls, who were eagerly awaiting the final round of the First Year Student Trial Bar Competition. Students gathered to witness Rick Bradley and Denise Hartsfield present their cases for the jury and Judge William H. Freeman.

The case, Aircraft Leasing, Inc. v. Hayworth, involved a claim by Aircraft Leasing for damages to its plane resulting from Hayworth's landing, and a counterclaim by Hayworth for injuries received in the landing accident. At issue was whether Hayworth was responsible for the tire blow out or whether Aircraft Leasing had leased the plane with a defective tire.

Hartsfield, counsel for plaintiff, argued that Hayworth's landing of the airplane placed so much pressure on the tire that even a brand new tire would have exploded. Bradley, counsel for the defendant, argued that the owner of Aircraft Leasing had not thoroughly checked the plane before allowing Hayworth to take off, and therefore had not noticed that the old tire needed to be replaced.

This Trial Bar Competition was the class of 1991's first opportunity to play attorney. Each participant represented the defendant in one round and the plaintiff in another. Each round required a voir dire, an opening statement and a closing statement. The students were given instructions on what to look for in conducting the voir dire, as well as guidelines for outlining the opening and closing statements.

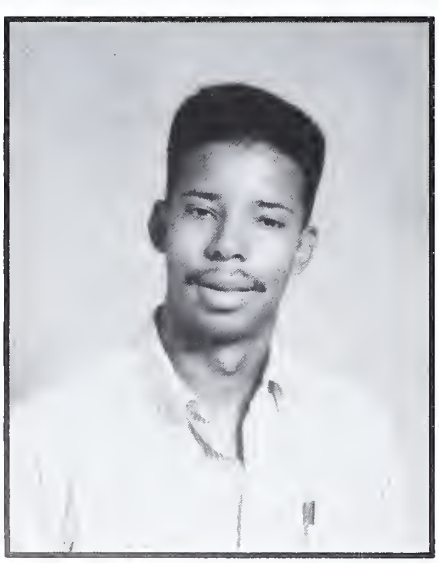
The stated goals of the competition were to learn some fundamental trial techniques, to increase interest for trial work, and most of all to have fun. These goals were certainly realized; as Hartsfield commented, the competition was "great, great fun." This seemed to be the consensus among the competitors.

Seventy-eight students competed in the competition this year. Of that number the final sixteen, along with four other competitors, were extended invitations to join the Student Trial Bar.

Freeman, a Wake Forest Law alumnus, recognized that both students' arguments were strong and effective. In the final round, the scores differed by only one point with the decisive point going to Bradley.

Once again, Wake Forest would like to express thanks to Judge Freeman for presiding over the competition. Congratulations to Denise, Rick, all of the other participants, advisors and judges for making this First Year Trial Bar Competition a success.

By Jennifer Martin, a Second-Year Student from Baltimore, MD.



Rick Bradley

Denise Hartsfield

Judge William Freeman (photo by Poole)

WFU CLE Expands to Meet Demand

Effective January 1, 1988, the North Carolina State Bar has instituted mandatory Continuing Legal Education (CLE) requirements applicable to all attorneys licensed to practice in the state.

Wake Forest CLE Director, Lloyd Rector, summarizes these requirements as follows: "All lawyers must fulfill 12 credit hours of CLE courses approved by the bar as meeting bar standards. Of these 12 hours, each attorney must fulfill 2 credit hours of legal ethics courses each year and at least every three years complete a special three hour program in ethics.

"Additionally, attorneys in their first three years of practice must attend at least nine hours of CLE courses emphasizing practical skill."

The three primary providers of CLE courses in North Carolina are the North Carolina Bar Association, the North Carolina Academy of Trial Lawyers and the Wake Forest University School of Law CLE Program.

The Wake Forest CLE program has recently expanded its course offerings to meet the demand created by the new State Bar requirements. In addition to offering a three hour ethics course designed by Wake Forest CLE Associate Director Susan Montaquila, the program offers a number of substantive courses through which attorneys may satisfy additional hour requirements while keeping abreast of developments in, or expanding, their field practice. Attorneys who want to satisfy their CLE requirements in a single session may do so by attending the North Carolina Annual Review, a 12 hour comprehensive course currently offered by the Wake Forest CLE program. The Annual Review, however, will not satisfy CLE requirements for lawyers in their first three years of practice.

Offered for the first time in November of 1988, the CLE program has also added a practical skills course designed to satisfy the nine substantive credit hours demanded of lawyers in their first three years of practice. This course, administered in Raleigh, Winston-Salem and Charlotte, focuses primarily on trial practice, business planning, family law, wills and, most importantly, debt collection. All courses are taught by North Carolina attorneys and are tailored to meet the specific needs of North Carolina attorneys.

As of December, 1988, yearly total Wake Forest CLE Program attendance was in excess of 4,000 attorneys. Given such an exuberant response, the CLE program will continue all present course offerings while expanding the range of substantive courses offered to Wake Forest CLE participants.

In 1989 Wake Forest CLE program offerings will include, among others, substantive courses on family law, current employment law issues, and the protection, marketing, and distribution of computer and communication technology.

By Stephen Jeffries, a Third-Year Student from Bethesda, MD.

Wake Forest University School of Law
1989 Continuing Legal Education Schedule

Portraying & Defending Personal Injury Damages — 6 MCLE Credit Hours including 5 MCLE Practical Skills Hours

March 10	Raleigh, NC	Marriott Crabtree Valley
March 20	Winston-Salem, NC	Stouffer Winston Plaza
May 5	Asheville, NC	Ramada Inn West

Current Employment Law Issues 1989 — 12 MCLE Credit Hours

March 30-31	Alexandria, VA	Old Town Holiday Inn
May 18 & 19	Hilton Head, SC	Mariners Inn
June 8 & 9	Chicago, IL	Marriott Downtown

Professional Responsibility and Ethics Symposium — 3 MCLE Credit Hours

April 21	Winston-Salem, NC	WFU Law School Courtroom
May 12	Raleigh, NC	Brownstone Hotel
June 30	Asheville, NC	Great Smokies Hilton

Workers' Compensation Practice — 6 MCLE Credit Hours including 4 MCLE Practical Skills Hours

May 26	Raleigh, NC	McKimmon Center
June 2	Winston-Salem, NC	Sheraton North
June 16	Asheville, NC	Great Smokies Hilton

For more information please call (919) 761-5560.

Software, Piracy and the Implied Covenant of Good Faith

By William Toole

William W. Toole

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I. INTRODUCTION

The continued growth of the computer software industry depends upon adequate protection for the work of the program author. Software piracy adds no value to a work and deprives the innovator of the opportunity to recoup development investments. Yet, at the same time, continued software development depends upon access to existing ideas and protocols found within programs. Government policy recognizes that subsequent developers often create entirely new products using ideas present in existing technology, and so permits limited access and use of otherwise protected programs.

However, the balance between the rights of the innovator and the rights of a developer who subsequently adds value may be upset by the 1985 *SAS Institute, Inc. v. S & H Computer Sys., Inc.* decision.[1] In that case, the court for the Middle District of Tennessee relied upon the implied covenant of good faith to hold that licensees of a computer program may not develop competing programs, even if a stranger could create such a work.

A developer may combine this protection against subsequent competition with trade secret protection of ideas and copyright protection of expression to create a powerful set of protections for the innovator. Such stacking may exceed the degree of protection that best promotes software development. Combine such protection with a software innovator who has economic power, and the innovator has a nearly absolute monopoly over the market for a particular software product. Such combinations bar from competition developers who significantly add value to a product, or even creates an entirely new product, where there has existed a contractual relation between the first developer and the second. Development of new products declines; standardization is nearly impossible. For reasons of public policy, courts should limit the scope of *SAS* to cases of egregious conduct where the breach involves manifest harm to the licensor, where the licensee adds no value to the development of competing software and where copyright protection already exists.

II. ILLEGAL METHODS TO PROTECT SOFTWARE

The demand for applications software continues to exceed the software available, creating a lucrative market for developers. However, the nature of computer software is such that "pirates" with very little knowledge or investment can make perfect copies of software and use these unauthorized copies to compete directly against the innovator. Piracy is a serious concern to software developers since the pirate does not need to recoup significant development costs. Because copying software is so easy, a pirate does not lose time to development before entering a market. Thus, a pirate can compete against an innovator at reduced price and almost at the very instant the innovator enters the market. Without adequate legal protections from piracy, there is little economic incentive for a true developer to produce innovative software. The pirate may too easily preempt the developer's market.

Recognizing that legal protection is necessary to encourage technological development, courts and Congress have acted to protect computer software developers. Software protection may be in the form of trade secret, patent, copyright or a combination of the three. Additionally, developers may use licensing schemes to protect the software program.

Trade secret protects any "formula, pattern, device or compilation of information" that relates to a process or device used by a business.[2] Trade secret effectively provides a business with

[1] *SAS Institute, Inc. v. S & H Computer Sys., Inc.*, 605 F. Supp. 816 (M.D. Tenn. 1985) [hereinafter *SAS*].

[2] *Restatement of Torts,* section 757 comment b (1937).

[3] *Id.*

[4] For a description of reverse engineering in the software context, see *E.F. Johnson Co. v. Uniden Corp. of Am.*, 623 F. Supp. 1485 (D. Minn. 1985).

protection of an idea for as long as that idea is not generally known to competitors. A business may license the use of the trade secret without violating the secrecy requirement.

The owner of this information must keep the secret from competitors in order to maintain trade secret protection. "Matters which are completely disclosed by the goods which one markets cannot be his secret."[3] Thus, absent contractual relations to the contrary, competitors may lawfully acquire the good and subsequently analyze the product (in a process called *reverse engineering*) for information contained within the product.[4] The policy permitting reverse engineering encourages the dissemination and use of knowledge in development of competing substitutes as well as new products. Society benefits from the policy insofar as the prohibition against an absolute monopoly in ideas permits product development.

Computer software is undoubtedly a subject of trade secret protection, and various courts so hold.[5] Misappropriation occurs where a party violates a confidential relation, as where the party reverse engineers software in express violation of a license term. However, because computer software "completely discloses" within its code the process by which it operates, developers feel inadequately protected by trade secret, particularly where the product is sold rather than licensed. Thus, there are strong reasons to find alternative legal methods to protect software from piracy.

Patent protection may protect software in some cases. Patent protects *processes* which are at once new and useful.[6] Matter obvious to a person having ordinary skill in the field to which the subject matter pertains is unpatentable;[7] the same is true of laws of nature, natural phenomena and abstract ideas.[8] After a series of decisions, the Supreme Court extended patent protection to software that is part of a larger patentable process.[9] The District Court of Delaware since extended patent protection to computer programs that stand alone.[10] However, the scope of patent protection in the software context is unresolved.

Patent approval grants the developer a limited use monopoly for seventeen years.[11] A condition of approval is that the developer supply information specifying the scope of the patented process.[12] Thus, patent promotes innovation by at once giving innovators an economic monopoly on a particular process while simultaneously requiring dissemination of an idea with the possibility that it might aid in the development of other processes.

Computer software exhibits a unique combination of literary expression and technological process. Recognizing these unique qualities, and that existing protection was inadequate, the National Commission on New Technological Uses of Copyright Works (CONTU) recommended that Congress expressly extend copyright protection to computer software.[13] Copyright now protects novel *expression* within computer software.[14] Cases hold that expression may be in the form of source code, object code,[15] or structure, sequence and organization.[16] The statute also provides that the holder of the copyright has an absolute right to develop "derivative works."[17]

Copyright protection statutorily excludes ideas, processes procedures or methods of operation.[18] In this sense it differs from trade secret or patent. Where the idea and expression of that idea are indistinguishable, no copyright protection extends.[19] Reverse engineering of copyrighted code and subsequent borrowing of ideas does not establish copyright infringement, absent copying of expression.[20] "One is always free to make a machine perform any conceivable process . . . but one is not free to take another's program."[21] Thus, policy

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[5] *McCormack and Dodge Corp. v. ABC Mgm't Sys., Inc.*, 222 USPQ 432 (Wa. Sup. Ct. Dec. 22, 1983); *see also University Computing Co. v. Lykes-Youngstown Corp.*, 504 F. 2d 518 (5th Cir. 1974).

[6] *See generally* 35 U.S.C. sections 101, 102 (1982).

[7] 35 U.S.C. section 103 (1982).

[8] *Diamond v. Diehr*, 450 U.S. 175 (1981).

[9] *Diamond v. Diehr, supra* note 8 (where a rubber curing process used a computer program to continuously monitor internal temperatures and make adjustments). The court considered the software program a mathematical formula which by itself was unpatentable.

[10] *Paine, Webber, Jackson & Curtis, Inc. v. Merrill Lynch, Pierce Fenner & Smith, Inc.*, 564 F. Supp. 1358 (D. Del. 1983) (data processing software patentable). This case seems to stand for the proposition that all computer software is patentable. *E.g. see* Summer and Lundberg, *The Versatility of Software Patent Protection: From Subroutines to Look and Feel*, Computer Law. 1 (June 1986). Such a holding seems overly expansive of the limited holding of *Diamond v. Diehr, supra* notes 8 and 9.

[11] 35 U.S.C. section 154 (1982).

[12] 35 U.S.C. section 111 (1982).

[13] Final Report, National Commission on New Technological Uses of Copyrighted Works (1978) [hereinafter *CONTU*].

[14] *17 U.S.C. section 117 (1982).*

[15] *Apple Computer Inc. v. Franklin Computer Corp.*, 714 F. 2d 1240 (3rd Cir. 1983), *cert. dismissed*, 464 U.S. 1033 (1984) (holding programs imbedded in ROM chips are copyrightable where there is no merger of idea and expression).

[16] *Whelan Assoc. v. Jaslow Dental Lab.*, 797 F. 2d 1222 (3rd Cir. 1986), *cert. denied*, —U.S.—, 107 S.Ct. 877 (1987).

[17] 17 U.S.C. section 103 (1982). Defining derivative works is problematic. *See* R. Nimmer and P. Krauthaus, *Copyright and Software Technology Infringement: Defining Third Party Development Rights*, 62 Ind. L.J. 13, 30-32 (1986) [hereinafter *Software Technology Infringement*].

[18] 17 U.S.C. section 102(b) (1982). *See also Baker v. Selden*, 101 U.S. 99 (1879) (where blank forms were necessary to the process taught in accounting book, those blank forms were not copyrightable expression).

[19] *Morissey v. Proctor and Gamble Co.*, 379 F. 2d 675 (1st Cir. 1967) (where there is at best only a limited number of forms of expression of a subject matter, that form of expression is not subject to copyright).

[20] Certain case law indicates reverse engineering is inappropriate where copyright exists, since reverse engineering necessarily requires the making of an unauthorized copy. *See Hubco Data Prods. v. Management Assistance Inc.*, 219 U.S.P.Q. 450, 456 (1983). *But see E.F. Johnson Co. v. Uniden Corp. of Am., supra* note 4, at 1501 n.17. For a discussion of the scope of possible copyright infringement, see T. Hazen, *Contract Principles as a Guide for Protecting Intellectual Property Rights in Computer Software: The Limits of Copyright Protection, The Evolving Concept of Derivative Works, and the Proper Limits of Licensing Arrangements*, 20 U.C.D. L. Rev. 105, 116-25 (1986) (arguing that a license agreement cannot create greater rights than a valid copyright) [hereinafter *Computer Software Protectio*

balances monopoly incentives for the innovator with society's need for access to ideas that further the development of useful goods.

Due to the unique nature of computer software, it is possible to protect a program with patent and copyright simultaneously.[22] A more powerful combination involves the stacking of trade secret and copyright protections.[23] So long as the information pertaining to a trade secret stays generally secret, trade secret protection of ideas may last in perpetuity. Copyright offers a monopoly to the holder of a work made for hire for between 75 to 100 years.[24] Additionally, though there is some tension between trade secrecy requirements and copyright disclosure, copyright does not require the *full* disclosure of the expression in order to protect the work.[25] Thus, the combination of copyright and trade secret offers developers significant protection from acts of software piracy by permitting legal control of ideas as well as expression.

Original software developers seek to maintain absolute control over the right to develop subsequent products since protection of ideas and unpatented processes enhances the value and life of the product. With such protection the innovator can either extend the commercial life of the product or adapt the original work to meet changing market needs. The greater the protections offered original developers, the greater incentive there is to create the original work.

However, government policy recognizes that subsequent developers often create entirely new products using ideas present in existing technology. Additionally, where grants of monopoly are too expansive, the holder tends to rest without making subsequent improvements. Thus, in each of the protective measures granted innovators, a countervailing measure exists to protect the public need for continued product development. Subsequent developers may save time and cost by using proven ideas and technology when they add new value.[26] There is no absolute requirement that a subsequent developer who adds value reinvent the wheel.

This government policy also recognizes the advantage of standardization.[27] Standardization is particularly important in the computer software context, where compatibility between software is essential if programs are to be able to "talk" to each other. Standardization requires access to software communication codes, or protocols. The more absolute the protection given the innovator, the more difficult it is to achieve product standardization. Thus, software protections balance the needs of society with the desire of the original developer to be a monopoly holder.

III. SAS AND THE IMPLIED COVENANT NOT TO COMPETE

The holding of *SAS* may upset the balance between encouraging the innovator and preserving public access to ideas. In *SAS*, the plaintiff developed and marketed a special statistical applications program that ran on IBM and IBM compatible hardware. The plaintiff recognized that a program suitable for use on the VAX system of computer hardware would fill a substantial market, and had began final testing of such a version. In the meantime, the defendant sought and received a license from the plaintiff to use the copyrighted IBM version of the SAS program. The court concluded that the defendants licensed the program in order to copy, convert and market the program for use on VAX computers.[28]

The case was unusual in that there were numerous instances of egregious conduct on the part of the defendants. The defendants were on notice that their effort to convert the SAS program was legally suspect.[29] In obtaining the license from the plaintiff, the defendants did not reveal their intent to develop a competing program.[30] In developing the competing work, the defendant violated contractual agreements not to copy, transport, or use the program after termination of the license agreement.[31] The defendants made no effort to improve the SAS program. Prior to trial the defendants altered and destroyed evidence.[32] Further evidence suggested the defendants perjured themselves during testimony.[33]

The court found that the defendants infringed the plaintiff's copyright and violated the implied contractual covenants of good faith and fair dealing. Citing *Nimmer on Copyright,* the court concluded that the content of the implied covenant in the copyright context included a promise not to create a competing work based upon the licensed "idea, theme, or title, *even if a stranger could create a new work with such idea, theme or title without infringing the grantor's copyright.*"[34] Based on this finding, the court held in

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[21] *CONTU, supra* note 13, at 20.

[22] Patent protects *process;* copyright, *expression.* Thus, where a new and useful process receives patent protection, it may be expressed in such a way that copyright protection also applies.

[23] *Warrington Assocs. v. Real-Time Eng'g Sys., Inc.,* 522 F. Supp. 367 (N.D. Ill. 1981) (Copyright Act did not preempt claim of trade secret misappropriation).

[24] 17 U.S.C. section 302 (1982).

[25] Required disclosure is limited. An applicant need only file the first and last 25 pages of a program with the Copyright Office in order to receive copyright protection. 37 C.F.R. section 302.20(c) (2) (vli) (1986). Techniques to further limit disclosure include depostiting object code to preserve the trade secret requirement of secrecy. *See* Davidson, *Protecting Computer Software: A Comprehensive Analysis,* 1983 Ariz. St. L.J. 611, 736-41.

[26] "Added value" is non-trivial, creative enhancement to the original that creates a new product. In this sense it is distinguishable from piracy, which is mere copying for profit without more. The concept of "derivative work," *supra* note 17, is added value that is copyright protected. Not all value additions are copyright protected, however. For a model analyzing added value in the computer software context, see *Software Technology Infringement, supra* note 17, at 36-39.

[27] *E.F. Johnson Co. v. Uniden Corp. of Am., supra* note 4, at 1501-03 (holding that protocol 'Barker word' necessary for communication with original developer's software was idea subject to reverse engineering). *See also CONTU, supra* note 21, at 21. ". . . When specific instructions, even though previously copyrighted, are the only and essential means of accomplishing a given task, their later use by another will not amount to an infringement."

[28] *SAS, supra* note 1, at 820.

[29] *Id.*

[30] *Id.,* at 821.

[31] *Id.,* at 827.

[32] *Id.,* at 823.

[33] *Id.,* at 826 ("the actual method employed by S & H was not the method described in its testimony").

[34] 3 *Nimmer on Copyright,* section 10.11[B] (1983), *quoted in SAS, supra* note 1, 827-28 (emphasis added).

part that the defendants "agree[d] as a matter of law not to use proprietary SAS materials in the process" of developing statistical software for the VAX environment.[35]

A broad reading of this holding, when stacked on trade secret and copyright protection, allows the first author to preempt future software development. This combination of protections grants to the innovator a nearly *perpetual* monopoly over ideas as well as expression. The holding prevents users of licensed programs from observing an idea, enhancing it, and independently developing a new competing program. Such a reading could have prevented the development of the Lotus 123 spreadsheet, which built upon the VisiCalc idea of individual cell addresses. The decision upsets the balance between the rights of the software developer and the needs of society. Thus, it is important to look more closely at the sources Nimmer relies upon in the restatement which the *SAS* court adopted.

IV. IDENTIFYING THE IMPLIED COVENANT OF GOOD FAITH

A. Added value and manifest harm

The implied covenant of good faith as applied in the copyright context first developed with the rise of the movie industry.[34] In these cases, book publishers licensed stage rights to theatre companies, prior to contemplation of the existence of the moving picture. Later, as the infant film industry sought material, each sought to license the previously unconsidered film rights, claiming that the right to do so lay exclusively with one or the other. In these cases, the courts assumed that film distribution would destroy any economic value in the right to produce a stage version. The courts also found that the right to grant such rights frequently remained with the publisher.

> There is implied a negative covenant . . . not to use the ungranted portion of the copyright estate to the detriment, if not destruction, of the licensees estate. . . . [If the parties] permitted photo-plays of Ben Hur to infest the country, the market for the spoken play would be greatly impaired, if not destroyed.[37]

These cases applied the negative covenant to situations where the parties did not anticipate the existence of competing rights.

Professor Nimmer cites *Nelson v. Mills Music, Inc.*[38] for the proposition that good faith implies that the grantee will not create a new work "based upon the same idea, theme or title."[39] In *Nelson,* plaintiff composers assigned their song "Red Roses for My Blue Baby" on a royalty basis, only to find their publisher subsequently distributing a song entitled "Red Roses for a Blue Lady." Because the plaintiff's composition was the source of the second work, the court found that "good faith" obligated the publishing company "not [to] use plaintiff's composition for the purpose of fashioning a competing song to be sold in place of plaintiff's song."[40]

However, Nimmer notes that in *Van Valkenburgh, Nooger & Neville, Inc. v. Hayden Publishing Co.*[41] the publisher breached no covenant of fair dealing even though it published a series that competed directly with the work plaintiff assigned to the same publisher.[42] In this case, the plaintiff author wrote a five volume series titled *Basic Electricity* and another five volume set titled *Basic Electronics.* These were published in 1954 and 1955, quickly became the publisher's best sellers, and accounted for a substantial portion of its income. The author received a 15% royalty. In 1962 the parties began negotiating for updated versions, but the negotiations broke down after a year when the author refused to accept a lower rate. The publisher then hired outside authors to prepare two seven volume series on the same subjects. Organization, presentation and picturing "could well be regarded as an exact description of the [plaintiff] author's existing book," although there was no finding of actual appropriation.[43]

The court held that absent express provision to the contrary there is a "general freedom of action of the publisher to produce competing works . . . ."[44] A covenant to use best efforts to promote the author's work "does not close off the right of a publisher to issue books on the same subject, to negotiate with and pay authors to write such books and to promote them fully according to the publisher's economic interests . . . ."[45] However, the court noted that "there may be a point where that activity is so *manifestly* harmful to the author, *and must have been seen by the publisher so to be harmful,* as to justify the court in saying there was a breach of the covenant to promote the author's work."[46]

In *Nelson,* the equities were with the plaintiff composers. The infringing publisher substantially copied the original work without significantly adding value. Thus, the infringer depended upon the efforts of the original composers to make a work that manifestly harmed the position of

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[35] *SAS, supra* note 1, at 828. In trying to avoid application of the implied covenant, defendant S & H argued that the implied covenant was limited to instances where a licensee had a duty to *promote* the licensed work. The court rejected this argument.

[36] *E.g. Manners v. Morosco,* 252 U.S. 317 (1920); *Kirke La Shelle Co. v. Paul Armstrong Co.,* 263 N.Y. 79, 188 N.E. 163 (1933).

[37] *Harper Bros. v. Klaw,* 232 F. 609, 613 (S.D. N.Y. 1916) (holding that neither party to a license for stage rights could license film rights without the consent of the other).

[38] *Nelson v. Mills Music, Inc.,* 278 App. Div. 311, 104 N.Y.S. 2d 605 (1951), *aff'd,* 304 N.Y. 966, 110 N.E. 2d 892 (1953).

[39] 3 M. Nimmer and D. Nimmer, *Nimmer on Copyright* section 10.11[B], n.12 (1987).

[40] *Nelson, supra* note 38, at _____, 104 N.Y.S. 2d at 607.

[41] *Van Valkenburgh, Nooger & Neville, Inc. v. Hayden Publishing Co.,* 30 N.Y. 2d 34, 281 N.E. 2d 142, *cert. denied,* 409U.S. 875 (1972).

[42] *Nimmer on Copyright, supra* note 39, n.12.

[43] *Van Valkenburgh, supra* note 41, at _____, 281 N.E. 2d at 143.

[44] *Id.,* at _____, 281 N.E. 2d at 145. The court did find that the publisher breached an express "best efforts" clause insofar as the publisher's salesmen had devoted a large portion of their time promoting the later work. *Id.,* at _____, 281 N.E. 2d at 144.

[45] *Id.,* at _____, 281 N.E. 2d at 144.

[46] *Id.,* at _____, 128 N.E. 2d at 145 (emphasis added).

those authors. There was evidence that the infringing publisher attempted to avoid paying royalties to the original authors by publishing the second work. The publisher must have seen such "unclean dealing" as manifestly harmful to the original authors.

Where a subsequent author independently adds value to an idea, and where that author deals honestly with the original author, there seems to be no violation of the implied covenant. The rule reaches the two-pronged goal of promoting innovation by protecting the rights of the original developer and the need society has for continued value added effort. Thus, a subsequent software author may use the idea within a licensed program to compete with the original work so long as the subsequent developer uses the idea in a way that both adds new value and does not use guile. Such a rule necessarily requires a case by case analysis of the facts, yet it is less burdensome than creating an unbargained—for prohibition against competition that significantly inhibits software development.

Applying this rule, there was no violation of implied good faith where a wholesale manufacturer sold a trophy designed along the lines of one commissioned by the wholesaler's customer.[47] The manufacturer's trophy, though "similar in some respects," was not the same insofar as "the angle of extension of the right arm from the body" differed between the two trophies of a cowboy.[48] Thus, the court found the wholesaler added value. There was no manifest indication that the manufacturer's action would harm the distributor.

There is little difficulty in applying of added value and manifest harm to the facts in *SAS*. The defendant S & H was well aware that making unauthorized copies and transporting the program to an unlicensed site were manifestly harmful to the plaintiff. Consequently, it attempted to act in secret. The defendant continued to use the program after expiration of the license agreement. Nor the defendant add value to the original work. Rather, the defendants were guilty of attempting to write a competing work that relied almost exclusively upon the efforts of the original authors.

Other cases decided during the time of the *SAS* decision, though not in the software context follow this proposition. Where there was evidence that a publisher "directly lifted" a grantor's material and used it in a subsequent competing work to avoid royalty payments, there may have been a breach of the implied covenant of good faith.[49] A publisher's use and subsequent composition of a "new, similar derivative theme" that supplanted the composers' pre-existing theme, depriving them of the right to royalties, also may have breached the implied obligation not to use the same theme to compete.[50] In both cases, there was evidence that the alleged infringer acted in a way that manifestly harmed the wronged party by affecting royalty rights, without significantly added new effort to the original work.[51]

However, in *Wolf v. Illustrated World Encyclopedia, Inc.*,[52] plaintiff illustrator did not violate an implied covenant of good faith when he sold to a competitor duplicates of illustrations that he had previously provided defendant under contract. The court felt compelled to follow *Van Valkenburgh,* though it did not "express approbation for the conclusion."[53]

Nimmer finds the *Wolf* decision "questionable" and "shocking."[54] The illustrator added no value through independent effort to the second set of illustrations, and there appeared to be no good faith attempt to do so. The *Wolf* court decided the case on an incorrect reading of *Van Valkenburgh.* There is little doubt that *Wolf* passes over the line of manifest harm drawn by the *Van Valkenburgh* court. It takes no effort to imagine that the illustrator must have seen the harm that would result from distributing the same illustrations to competing encyclopedia publishers.

B. *"Even if a stranger could create such a work"*

Nimmer's restatement, and the *SAS* court's adoption, of the implied covenant asserts that a licensee is barred from creating a new competing work "even if a stranger could create a new work with such idea, theme or title without infringing the grantor's copyright."[55] Nimmer does not cite cases for the proposition that the covenant reaches property that would otherwise receive no protection. Apparently, Nimmer bases this assertion upon the fact that arms-length transactions may create rights where none previously existed.[56] However, this appears to be a misstatement of the scope of the covenant of good faith implied between licensee and licensor in the copyright context.

In *Miller v. Universal Pictures Co.*, a case which Nimmer fails to cite, the New York Supreme Court reversed the lower court finding that the defendant had breached an implied duty of good faith.[57] The defendant motion picture company had licensed the right to portray the plaintiff widow of Glenn Miller and her family in a film about the life of the great band leader. The

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[47] *Williams v. Kaag Mfrs.*, 338 F. 2d 949 (9th Cir. 1964), *cited in Nimmer on Copyright, supra* note 39, n.12.

[48] Id., at 951. In other words, though the idea of a cowboy was similar, the expression of that idea differed.

[49] *Ekern v. Sew/Fit Co.*, 622 F. Supp. 367 (D.C. Ill. 1985), *cited in Nimmer on Copyright, supra* note 39, n.11.1.

[50] *Cortner v. Israel,* 732 F. 2d 267 (2nd Cir. 1984), *cited in Nimmer on Copyright, supra* note 39, at n.11.1

[51] *See also Miller v. Universal Pictures, Co.*, 10 N.Y.S. 2d 972, 180 N.E. 2d 248 (1961) (where court refused to grant recovery on basis of implied covenant of good faith) (discussed *infra* p.21-22). In *Miller* the defendant movie company sought and obtained a license to use original manuscripts in a movie soundtrack from the widow of Glenn Miller. The defendants re-recorded all songs in stereophonic sound, and marketed the result in competition with the plaintiff's original recordings, causing a reduction in royalties.

[52] *Wolf v. Illustrated World Encyclopedia, Inc.*, 41 A.D. 2d 191, 341 N.Y.S. 2d 419 (1973), *cited in Nimmer on Copyright, supra* note 39, n.12.

[53] *Id.*, at _____, 341 N.Y.S. 2d at 421.

[54] *Nimmer on Copyright, supra* note 39, section 10.11[A] n.2.

[55] *Nimmer on Copyright, supra* note 34, *quoted in SAS, supra* note 1, at 827-28.

[56] Action for breach of implied covenant of good faith is action on the contract. *See Nelson v. Mills Music, Inc., supra* note 38 (action is for breach of contract or trust); *Van Valkenburgh, supra* note 41 (there is implicit in all contracts an implied covenant of fair dealing and good faith).

[57] *Miller v. Universal Pictures Co.*, 11 A.D. 2d 47, 201 N.Y.S. 2d 632 (1960), *rev'g* 18 Misc. 2d 626, 188 N.Y.S. 2d 386 (1959), *amended on other grounds,* 13 A.d. 2d 473, 214 N.Y.S. 2d 645, *aff'd*

plaintiff also purported to license the right to "simulate the style, manner and manner of playing" of Miller and his orchestra.[58] The plaintiff received substantial royalties from the movie distribution. The license made no reference to the right to market recordings of the movie soundtrack.

To create a soundtrack suitable for the then novel stereo technology, Universal used its own orchestra to "meticulously" recreate the big band sound of the Glenn Miller orchestra. The defendant never used the original RCA recordings. In marketing the resulting soundtrack, the defendant's album competed directly with the exclusive recording license Miller's widow granted RCA records.

The lower court found plaintiff had a property interest in the Glenn Miller "sound" that the defendant appropriated. The Supreme Court rejected this proposition. "Plaintiff never had, and certainly does not now have, any property interest in the Glenn Miller 'sound.' Indeed, . . . even while Glenn Miller was alive, others might have meticulously duplicated or imitated his renditions."[59] The Supreme Court declined to imply a negative covenant because "plaintiff... had no protectible [sic] interest as such in the Glenn Miller sound;" "if plaintiff wished to restrict Universal Pictures in the use of its soundtrack, she should have expressly so provided in the agreement."[60]

This repudiation of Nimmer's claim that the implied covenant applies even if a stranger might compete receives ample case support. In *Ekern v. Sew/Fit* the court stated that a suit for breach of the implied covenant might be brought only "if [copyright] infringement is shown."[61] Where there was no copyright infringement of the cowboy trophy, the *Williams* court declined to find unfair competition.[62] And where the *Van Valkenburgh* defendant used the plaintiff's organization and structure, ideas that are in the public domain and not copyright protected, there was no breach of the implied covenant of fair dealing.[63]

As discussed earlier, *Nelson v. Mills Music* found that the plaintiff's copyright song was the source of the later composition and thus breached the implied covenant.[64] The state court did not consider the question of copyright infringement, the implication is that in fact no stranger could have created the second work without infringing the original copyright. The *Wolf* court noted that the holder of the original work made no claim of copyright protection in its claim against the work's illustrator.[65] Thus, the holder would have had no claim against a stranger who created the same subsequent work.

The *SAS* court concluded there was an interest subject to copyright protection. Consequently, it did not reach the question whether the scope of the implied covenant in fact extended to works that would not be otherwise protected by copyright. The earlier memorandum opinion considering a motion for partial summary judgment indicated that enforceability of the SAS license depended upon a finding that the subject matter was copyrightable.[66] Thus, it appears that proper reading of the *SAS* decision may warrant application of the implied covenant only where protections pre-exist the implied negative covenant.

Strong policy considerations urge a narrow reading of the *SAS* negative covenant, particularly in the software context. The covenant against subsequent development severely restricts the public's access to valuable information. Contrary to the express intent of copyright law,[67] such an implied covenant protects ideas even though the parties have not bargained for such protection. A contractual obligation of this nature would severely limit the future development and use of computers. Without software, computer hardware is useless. Though such a restriction on subsequent development protects the property rights of the software copyright owner, legal rulings that limit development of computer applications software could seriously affect the continued everyday use of the computer. Such limitations could be particularly harmful coming at a time when the development of computer use and access is critical to the success of this country's growth. The court should decline to imply a covenant that extends copyright—like protections to a product where no such protections exist independently nor have been bargained-for.

An additional concern is that the duration of the implied covenant could be indefinite. Implying a covenent not to compete of infinite duration effectively grants a party an unrestrained, unbargained-for permanent monopoly interest in an idea. There is no need to create such unbargained-for interests. If a party is entitled to absolute protection from competition, then it seems that the Rules of Civil Procedure should provide the party with injunctive relief.

The Supreme Court recognized that express contractual obligations in the patent context can upset the balance between the rights of the first innovator and those of the public as represented by the subsequent developer. Thus, a license/royalty agreement extended payments beyond the life of the patent is unenforcable since it is contrary to the purpose of promoting product development.[68] Accordingly, where an implied covenant extends a license agreement beyond the life of a copyright and upsets the goals balance in copyright law, the courts should also decline to apply such a covenant.

V. THE IMPLIED COVENANT AND ECONOMIC POWER

The obvious limitation to the implied covenant is that no such covenant can exist without a contract. Given the possibility that courts will imply the covenant frequently, software devel-

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mem., 10 N.Y. 2d 972, 180 N.E. 2d 248 (1961).

[58] *Id.*, at _____, 201 N.Y.S. 2d at 634.

[59] *Id.*, at _____, 201 N.Y.S. 2d at 634.

[60] *Id.*, at _____, 201 N.Y.S. 2d at 635.

[61] *Ekern v. Sew/Fit, supra* note 49, at 372.

[62] *Williams v. Kaag, supra* note 47.

[63] *Van Valkenburgh, supra* note 41.

[64] *See* p. 13 and following, *supra.*

[65] *Wolf v. Illustrated World Encyclopedia, supra* note 52.

[66] *S & H Computer Sys., Inc. v. SAS Institute, Inc.*, 568 F. Supp. 416, 420-421 (M.D. Tenn. 1983). *See also Computer Software Protection, supra* note 20, at 149-50.

[67] *See* note 18, and accompanying text, *supra.*

opers will seek to preempt subsequent innovation through license agreements whenever possible. As noted earlier, license agreements protect trade secret ideas as well.[69] Thus, software developers with economic power will almost always choose to license software and preempt future innovators rather than control of the product through absolute sale.[70]

The question of enforceability of end-user licenses occurs in two separate contexts. In the first, the end-user pays a one-time use fee, receives the software from a retailer and "assents" to the license through some action, such as opening the package. These "shrink wrap" or box top licenses occur most frequently in the mass distributed, micro-processor market. Commentators suggest the box top licenses are unenforceable.[71] Arguably, these licenses are either unconscionable or contracts of adhesion. Arguably the end-user has not assented to the terms of the license despite opening the box. The retailer has no ability to negotiate the terms with the customer, and the user believes that in fact a sale has taken place. Where the substance of the transaction is a sale, there is no reason why a court should artifically extend license protection based upon form. This is especially true where the software developer can dictate the terms of the license based upon his economic position.

The second situation involves software in limited distribution, usually performing a narrowly specific application. There are relatively few customers and the programs generally work on large mainframe computers. This situation describes the market context in *SAS*. Excessively restricted limited distribution licenses may be void on grounds of either statutory preemption or public policy.

Statutory preemption may apply where a covenant to compete is unqualifiedly implied in every software license. Such unqualified application will significantly upset the statutory balances sought through copyright and patent. The courts could find that federal statute preempts any implied covenant not to compete where a stranger could create the same product without infringement.[72]

The preemption approach requires mandatory denial of the implied covenant of good faith where such an application would upset the public/private balance. The public policy approach requires a case by case review of the facts. Public policy concerns include maintaining the balance between private and public interests, especially in the context of economic power.

There is a rebuttable presumption that the holder of a copyright in the software context has economic power.[73] Distributors of protected limited distribution software have a significant economic advantage that allows a distributor to insist upon limited licensing agreements. This is particularly true where a software innovator has monopoly control over an especially useful and necessary software program. If an implied covenant not to create competing software adheres to all licenses, and the only means to gain access to such application software is through a license, then the limited distributors preempt nearly all competition from entering the market place. Thus, customers are limited beyond the license in any further search to find either alternative program sources or improved application programs. If a license unilaterally denies in perpetuity a customer the right to remove himself from the terms of a license, the terms of such a license must be void as against public policy. Here, the implied covenant not to compete even though a stranger could compete effectively binds licensees to the licensor in perpetuity. Thus, the combination of economic power and the duties implied through the covenant give to limited distribution software innovators more strength than is necessary to protect software innovation from piracy. In fact, this combination usurps the needs of society by retarding software innovation.

The effect of such a combination can be seen if legal protections implied that book publishers might restrict readers from using ideas found within published books. There would be a significant decrease in the application of ideas, thus affecting the number and quality of products. The number of new ideas entering the marketplace would decline, since ideas found in one source could not be used as the foundation of new ideas. Implying such contractual agreements certainly would impair the progress of innovation and application of ideas for the benefit of society.

Absent express statutory authority, courts should give no greater protection to licenses in the mass market context than absolutely necessary. This names that there should be no implied covenant not to create competing works implied in the license, assuming such license is valid. In the limited distribution software context, the implied covenant not to compete appears to offer the software innovator too much protection, particularly where there is economic power.

VI. CONCLUSION

The court in *SAS* stated that there exists in every license an implied agreement between licensor and licensee not to create competing works, even if strangers could do so. Such a broad covenant upsets the balance between public and private rights. In addition, such a broad reading of the implied covenant of good faith is not warranted in law.

The ultimate question to ask when deciding to apply the implied covenant is whether a court should provide more protections to a party than the parties intended or public policy requires. Where a party has no right to independent protection, the court should not bar subsequent developers of value added software from competing in the marketplace.

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[68] *Brulotte v. Thys Co.*, 379 U.S. 29, 32 (1964); *applied in Boggild v. Kenner Prods.*, 776 F. 2d 1315 (6th Cir. 1985). For a discussion of the nuances in this area, see *Computer Software Protection, supra* note 20, at 148.

[69] *See* p. 3, *supra*.

[70] The first sale doctrine permits the purchaser to use a copyright product in any manner that does not affect the grant of copyright. Thus, sale would permit the purchaser to reverse engineer. 17 U.S.C. 109 (1982).

[71] *See e.g. Computer Software Protection, supra* note 20, 151-57.

[72] *Brulotte v. Thys, supra* note 68, supports this rationale.

[73] *Digidyne Corp. v. Data General Corp.*, 734 F. 2d 1336 (9th Cir. 1984), *cert. denied*, 473 U.S. 908 (1985).

Alumni News and Features

Class of '38 Reunion

The Joseph Branch bust, by W.F. Thigpen of Rocky Mount. (photo by Dellinger)

Clay Hemric, Class of '38 (photo by Dellinger)

Dr. I. Beverly Lake, Sr., faculty member to Class of '38. (photo by Dellinger)

Class of '38 members, J.O. Bishop, Joseph Branch, and James Mason. (photo by Dellinger)

The Branch family posing with the Joseph Branch bust. (photo by Allen)

Class of '38 members, Clay Hemric and Norman G. Lancaster. (photo by Allen)

Partner's Banquet

Dean Beverly J. Poole from the University of Michigan, the featured speaker. (photo by Allen)

Mr. and Mrs. David Britt and E.H. Bridges. (photo by Allen)

Charlie "Red" Barham, Clyde Douglas, Gale Parker and I. Beverly Lake, Jr. (photo by Allen)

John Williard, Mr. and Mrs. Bill Davis, and Evelyn Meyer. (photo by Allen)

W.F. Thigpen, Joseph Branch, and J.O. Bishop. (photo by Allen)

William Todd Holleman, Robert E. Holleman, Nancy Joyner, and John C. Joyner. (photo by Allen)

Alumni in the Computer Law Field

James E. Meadows

James E. Meadows ('86) is an associate with Brown, Raysman & Millstein in New York City. The firm has about 20 lawyers, most of whom specialize in various aspects of computer law. Meadows is one of those specialists, having pursued his interests following graduation from Wake Forest.

Because computer law is such a new field, Meadows said there were no classes in the subject during his three years at law school. Instead, he found ways to integrate computer law into standard classes, writing papers and articles on the topic as part of his regular curriculum. One of his articles, "International Software Protection and Transactions," appeared in the Fall 1986 edition of the Rutgers Computer & Technology Law Journal, and in 1987 the Jurist published a condensed version.

Although Meadows did not target computer law as his professional goal until his third year of law school, the foundation for his interest had been laid at least since college. Meadows majored in mathematics as an undergraduate at the University of North Carolina at Chapel Hill, graduating in 1983 with a good deal of experience in mathematical computer programming. Once in law school, he gravitated to the CLRIC and continued his computer interests.

Following graduation, Meadows interviewed around the country before accepting a position in New York with Paul Hoffman, a solo practitioner and computer law specialist. After a year, he joined Brown, Raysman & Millstein.

He said the lure of computer law is partly the subject matter and partly its newness, "You get the opportunity on a daily basis to make law," Meadows said. "There are a lot of laws out there, but most of them haven't been specifically applied to computers."

Computer law involves virtually every area of the law, but principally general commercial law and Uniform Commercial Code. About 75 percent of Meadows' work involves contracts between computer hardware or software vendors and the people or companies who buy the computer products. For a vendor, the goal is to get as much money out of the product as he can; for a user, the goal is to ensure he gets what he pays for.

"The client wants something that works, the software developer wants to make sure he gets paid. The attorneys make sure there are no unreasonable legal risks," Meadows said.

Meadows said that despite not having formal computer law instruction at Wake Forest, a number of professors encouraged him by accommodating his interests in their classes. As to long-term goals, Meadows said that he might like to eventually be an in-house corporate lawyer, and if the company also needs legal expertise in computer law, it would make the position even more attractive.

By Ken Carlson, a Third-Year Student From Winston-Salem.

Paul B. Bell

Talk about intellectual property law and you'll probably mention Paul B. Bell ('48) in the same breath. Bell is senior partner at Bell, Seltzer, Park & Gibson in Charlotte, a 31-member firm that since 1948 has led the South in patent, trademark, copyright, computer and other forms of "intellectual" law. In fact, the firm is the largest specialty patent law firm between Washington, D.C., and Houston—a distinction that says as much about their expertise as it does about the tremendous growth in intellectual law issues.

Bell joined the firm in 1948 after graduating from Wake Forest. He spent three years in the Army Air Corps flying B-24 bombers in the China-Burma-India theatre during World War II, and returned to his native North Carolina to finish college and earn his J.D. in a combined program. In 1946, Duke and Wake Forest had a joint post-war law curriculum and Bell finished number one in the freshman class, giving him top billing at two schools in the same academic year.

"I don't think anyone else has that distinction," he laughed.

Bell didn't especially look for intellectual property law, but was sold on the idea by Paul B. Eaton, who had started the firm in 1922 and was the first patent law specialist in the South. Together they built a thriving practice that has developed as intellectual property law has grown, embracing everything from improvements in the textile industry to computer software and genetic engineering.

Bell spends much of his time litigating, with clients ranging from domestic to overseas companies. He also spends a lot of time advising clients in the legal intricacies of developing products, working so closely with company lawyers that he calls himself "a lawyer's lawyer." Typical activities for a client include copyrighting a computer program, patenting the hardware and procedures to build it, registering the trademark name for the hardware or software, then licensing both.

Together with admiralty law, patent specialists are the old-timers of the nationally recognized specialists. In addition to a state's bar examination, patent specialists must pass a separate bar exam by the United States Patent Office. It usually takes about five years of informal internship with a patent attorney to be competent enough to practice, Bell said.

Bell was born in Charlotte in 1922. He and his wife, Betty Sue, have four children and four grandchildren. His many activities include being current vice-president of the board of governors of the North Carolina Bar Association, president of the United States section of the Federation of International Patent Counsel, and adjunct professor at Wake Forest School of Law, where for 10 years he has taught a patent law course in the spring.

By Kenneth Carlson.

WFU Profile: Kyle Hayes

A "Hayes for Senate" poster, one of the many treasures Kyle Hayes has saved. (photo by Hall)

It must be something in the water. What else could account for the number of distinguished lawyers who come from such a relatively small corner of the state that is Wilkes County? Witness these, just to name a few: The Bryan clan, including Rhoda Billings, Wake Forest alumnus, former Chief Justice of the North Carolina Supreme Court, and now law professor at Wake Forest; Richard Tyndall, noted trial lawyer, senior partner of a reputable Winston-Salem firm, and teaches insurance law at Wake Forest.

Another member of this esteemed group whose roots lie deep in the rich heritage of Wilkes County is R. Kyle Hayes. Hayes is a 1931 graduate of Wake Forest School of Law, and at 83, has more than made his mark practicing law in his hometown of Wilkesboro and indeed throughout the state. A note to the uninitiated: Wilkesboro and North Wilkesboro are not the same town, as one rushing to make an interview is apt to discover. Hayes, who lives in Wilkesboro but practices in North Wilkesboro, was perhaps destined to practice law. His father, C. C. Hayes, was Wilkes County Clerk of Court for 16 years, and his uncle, Johnson J. Hayes, became the first federal judge for the Middle District of N.C.

Yet one should not let the considerable reputations of the Hayes' family obscure his own image, for Kyle Hayes is himself a study in achievement and distinction. Among his accomplishments, any one of which would be a lifetime goal for most entering practice today:

—Founding partner of Hayes and Hayes, a firm which has served Wilkes County for nearly 60 years.

—Co-owner, along with wife Margaret, of Smitheys Department Stores, a chain located throughout much of northwest North Carolina.

—Cattle and timber baron, with land spanning Wilkes, Alleghany and Ashe Counties.

—Veteran of the U.S. Marine Corp, who left his practice to serve during World War II.

—Candidate for Governor of N.C. in 1956.

—Candidate for U.S. Senate in 1960.

—Town attorney for Wilkesboro for nearly 50 years.

While his professional attainments are remarkable enough, it is the personal side of Kyle Hayes that is perhaps most unique and fascinating. A visit to the offices of Hayes & Hayes creates a tale worth telling indeed. Upon arriving at the offices, which, appropriately enough, are located in the Hayes Building in downtown North Wilkesboro, one is instructed to first tour Hayes' automobile "museum."

Dating from the 1920's, the collection is a mouth-watering wonderland for the car enthusiast. Present are such coveted models as vintage Ford "A" and "T" models, Cadillacs from several decades, a 1960's Corvair convertible, and beautiful models from the '50's with enough tailfins to populate an entire "Happy Days" episode.

While most of these classics Hayes actually drove and retired himself, some of them were acquired later for sentimental reasons. Among these is a '27 Ford Roadster, a model identical to the one that Hayes sold bibles out of just prior to entering law school. And then, there is the Model A Ford similar to the one that he and his wife, Margaret, honeymooned in.

To leave the auto warehouse and enter the offices of Hayes & Hayes is to walk from one museum into another. There within the confines of this rather unimposing second story office is a truly priceless collection of antiques and curios. The walls are lined with vintage firearms, immaculate in condition and over 200 in number. There is even a musket-ball pistol which Winchester Arms representatives have linked to the time of George Washington.

A small clear showcase in the corner of the room houses a dozen gold pocket-watches, which Hayes purchased "before gold got so darn high", in near perfect condition. Then there are the coins, equally as old and available in any demonination. One room is dedicated primarily to photographic memorabilia, including pictures of his family, ancestors, and highlights of his political career. After witnessing all that has come before, one really shouldn't be surprised at finding the large photo of Hayes with Ike Eisenhower hung on the wall. Oh, yes, and then there are the cards with the simple greeting, "Happy Birthday, Ron and Nancy Reagan". Also present are momentos from his political campaigns, including two brass elephants engraved with the number of votes he received in each contest.

The history lesson does not end there. One might suppose that there is much to be learned from a man who

has practiced law for 58 years, and such an assumption would be correct. In regard to law school, Hayes entered Wake Forest in 1928, "at a time when tuition was $60.00 per year, and a pair of Navy slacks, which everybody worn in those days, were about $2.00 a pair...", Hayes recalls. While the thought of double-digit tuition makes today's law student swoon for yesteryear, this was a considerable amount for one who had, like Hayes, just graduated from Appalachian Teacher's College, where education was free.

Hayes was not, however, unprepared. Thanks to his bible selling venture of the previous summer, he had amassed $600, which he reckons is about $16,000 in today's money, maybe more.

Inflation is not the only phenomenon that Kyle Hayes has observed from the very unique vantage point of his career; he has also monitored change as it has affected his beloved profession. "The practice of law is so much more specialized today...", Hayes observes, "in a small community that hampers a lawyer,—prices them right out of the market." Specialization, however, was never an earmark of Hayes' practice. Ina Myers, a quick-witted and attractive woman who has been Hayes' secretary since 1934, recalls the early days of practice: 'No matter how big or how little [the matter], we took it. We took whatever came in the door." Hayes doesn't accept as many cases as he once did, and with fewer coming in the door, Ms. Myers has been able to slip into "semi-retirement." Myers explains this status as "now I tell him when I'm going home instead of asking."

Another related change that Hayes has noted in the profession is the relative increase in the expense of practice. "Attorneys have always had to contend with the expense of maintaining a library," Hayes admits, "but with the dawning of the computer age, that expense has been multiplied severalfold. Even searching a title practically requires a computer nowadays." That added expense, Hayes adds, must be passed on to the client. The flat rate for title work Hayes & Hayes charged in 1931: $5.00.

When asked about his time spent at Wake Forest Law School, a smile spreads across his face as the memories rekindle. "We always worked very hard at the Law School," Hayes recalls. "I remember the time that Wade Brown and I stayed over Christmas break 1929 just to study for the Bar. By the time we finished, we could quote the constitution verbatim." They both passed the Bar that year and Wade Brown has been a distinguished practitioner in Boone for the last six decades. The Bar exam of that day might have been even more intimidating than the present. "That was the last year that the Bar was given by the Supreme Court Justices...," Hayes explains.

In this election year a correct telling of the Kyle Hayes story would be incomplete without mention of Hayes' own bittersweet political career. As mentioned previously, Hayes waged two campaigns for public office, and both races were unsuccessful. Hayes was an ardent Republican, a rare animal indeed in North Carolina at that time, and his back was against the wall in both contests. "Back then, eastern North Carolina didn't know what a Republican looked like," Hayes admits.

Whether a campaign is a personal success or failure, however, is a determination left solely to the candidate, and Kyle Hayes has found his peace. "I was the first candidate for Governor in North Carolina to run a statewide campaign," Hayes proudly relates. "We traveled through all 100 counties and we received 375,369 votes." And ultimately, Hayes considers himself a winner: "It was one of the greatest experiences of my life because it introduced me to the people of North Carolina."

Predictably, Hayes feels that campaigning for public office has deteriorated since the time he ran for office. Campaigning today, Hayes believes, consumes far too many resources. He cites as a prime example the Hunt-Helms Senate contest of 1984. "I just don't think such a campaign is worth the money to the people of North Carolina. I don't think a million dollars spent on a campaign affects five percent of the people, ...not near that many."

Another example of how campaigns have deteriorated in recent years, according to Hayes, is the increased reliance on negative campaigning. In addition to being unseemly, Hayes believes such tactics are counter-productive: "I don't believe you get a single vote by running a negative campaign. I think that if you just go out to the people and say 'Mr. So and So, I'm running for public office, and I'd like for you to vote for me.' Why, you'll do much better in the end." And Hayes feels that it doesn't hurt to ask anyone for a vote: "If [the voter] says, 'I'm sorry, but I owe my allegiance to another party,' I can't fall out with him."

In regard to bitter partisanship, Hayes recalls a valuable lesson. He was sitting on the Wilkes County Board of Elections when he learned that a seat on the Board was to be filled by an outspoken member of the Democratic party. "I was visiting my father that Sunday," Hayes recalls, "and I told him I wasn't going to serve with that man. He asked why and I gave him my reasons. He said, 'Well, I'd give a dog a chance,' so I went on and served with this man. We never had a dissenting vote the entire time he and I served on the Board. We formed a friendship that has lasted a lifetime. If I'd gone on and went my own way, I'd never have known the friendship that I've had with this man."

In fact, Kyle Hayes has formed many, many, valuable friendships across the state, the result of his own special brand of lawyering and his propensity for public service. Associate Dean James Taylor, Jr. has said of Kyle Hayes: "Compared to Kyle Hayes, most of the practitioners in the field today, including you and me, are all 'pale grey.' But Kyle Hayes is different; he's colorful; he is an original."

When asked how those of us facing practice today can avoid being just another generic lawyer, Hayes responded, "Well, I don't have any special advice to give anybody, but I think above all you need to be interested in justice. Another essential is honesty. You've got to be willing to remain honest, and you don't need to be greedy. You need to be interested in humanity, and you need to love the law." This is the receipe for success according to R. Kyle Hayes. The ingredients are not expensive, and the instructions are simple enough.

By David Hall, a Second-Year student from Greensboro, NC

Class Notes

1931

Wade E. Brown was honored in April as the oldest practising attorney in Watauga County. His portrait was hung in the county courtroom to commemorate his more than 50 years of service to Boone and Watauga County. Brown opened his first law office in Boone in 1931. He served in the state senate from 1947-49, in the state house from 1951-53, was mayor of Boone from 1961-67 and was chairman of the North Carolina Board of Paroles from 1967-72. In addition to his current general practice, Brown is legal counsel to students at Appalachian State University.

1948

Paul B. Bell has been named a vice president of the North Carolina Bar Association. He is currently president of Bell, Seltzer, Park & Gibson in Charlotte.

1955

Albert B. Russ was recently elected lieutenant governor of Division Four/ Florida District of Kiwanis International in Jacksonville. He married Geraldine "Gerry" Whaley on July 20, 1987. Last March, both wore Wake Forest colors and competed in the 15-K Jacksonville River Run, receiving cheers of "Go Deacs!" as they pounded the pavement.

1959

The North Carolina Academy of Trial Lawyers elected **George E. Clayton Jr.** to its board of governors in June. Clayton is a partner with Anderson and Clayton in Rocky Mount, N.C. He specializes in personal injury litigation.

Judge Major B. Harding was recently featured in Folio Weekly, a publication in Jacksonville, Fla., where he sits on the Circuit Court of the Fourth Judicial Circuit. The article highlighted Harding's 20-year career as a judge in Jacksonville and noted that Harding consistently receives "exceptionally high marks" in the annual judicial poll by the city's bar association.

1965

Leo Daughtry, a Republican, was recently elected to the North Carolina Senate representing Sampson and Johnston counties.

Dr. Richard H. Kessler now has a graduate degree in international law from New York University. He plans to start an international law practice.

1966

Lawrence S. Groff is a partner with Oster & Groff in Lincoln, R.I. He specializes in real estate and taxation. Groff is currently a member of the Rhode Island Bar Association's special resources committee. He and his wife, Joanne, have three children: Benjamin, Jonathan and Caroline.

1969

Allan B. Head has been elected to a four-year term on the National Board of the Young Men's Christian Association. He is also executive director of the North Carolina Bar Association.

1970

R. Lee Farmer was named the state's Outstanding County Attorney for 1988 by the North Carolina Association of County Commissioners in July. He is the county attorney for Caswell County and is a partner with Farmer & Watlington in Yanceyville. Farmer is the immediate past present of the North Carolina Association of County Attorneys and is currently president of the 17-A Judicial District Bar Association. He is also general counsel fo the Cherokee Council of the Boy Scouts of America and is director of the Piedmont Community College Foundation.

Michael J. Lewis was recently elected vice president for legislation of the North Carolina Academy of Trial Lawyers. He practices personal injury law in Winston-Salem.

1971

Gary S. Smithwick recently formed the firm of Smithwick & Belendiuk, P.C., in Washington, D.C. The firm practices before the FCC. He was formerly a partner with Baraft, Koerner, Olender & Hochberg, P.C., in Washington. Smithwick was married October 7, 1988 to M.R. "Peggy" Snyder, also an attorney (J.D.-Tenn.). Congratulations!

1972

Tom Mohr is practicing law in West Chester, Pa. His practice involves real estate and civil litigation.

Robert A. Valois is practicing labor law in Raleigh. He is also vice chairman of the Legal Services Corporation.

1974

James L. Cole was recently promoted to senior vice president in charge of trust marketing with Boatmen's First National Bank in Kansas City, Mo. His practice involves trust banking.

Charles D. Coppage practices general law with McCown & McCown in Manteo, N.C. He was a member of the Plymouth Town Council from 1982-84, and was presenting of the Second District Bar Association from 1982-83. Coppage is currently a major in the United States Army Reserves and serves as Brigade Judge Advocate with the Fourth Brigade, 108th Division, in Raleigh.

John B. O'Donnell, Jr. has a general law practice in Raleigh with Young, Moore, Henderson & Alvis, P.A. He was formerly with Hall, O'Donnell, Manning & Shearon, which merged with his present firm on May 1, 1988. He and his wife, Rachel, were expecting their first child in November.

1975

Danny G. Higgins has returned to private practice after two years as staff attorney for Washington County, N.C. He is also a member of the board of directors for the Washington County Arts Council.

1977

L. Michael Dodd was elected to the board of governors of the North Carolina Academy of Trial Lawyers in June.

Sallie Meade Howard has been appointed Kentucky's State Law Librarian.

M. Merrit's wife's name is "Sale" — not "Scale" as incorrectly stated in the Spring 1988 Jurist. Sorry Sale!

Steven G. Schwartz is commercial contracts manager with AT&T in New York City.

1978

Steven P. Pixley was promoted to chief of the division of litigation in the attorney general's office of the Federated States of Micronesia. He is responsible for overseeing all litigation involving the Federated States. He passed the Micronesia bar exam in March 1988.

1980

Thomas H. Ainsworth III is a personal injury plaintiff's attorney with Downer, Walters & Mitchener, P.A., in Charlotte. He is also president-elect of the Sharon Civitan Club and chairman of the pre-law counseling committee of the Mecklenburg County Bar Young Lawyers Division. On October 17, 1987, he married Jenny Lu Sharpe (WFU '83), an attorney who practices in Monroe, N.C.

J. Clark Fischer is attorney-advisor for the United States Air Force in Okinawa, Japan. He recently left active duty as an Air Force JAG for his current job. In addition, Fischer is a professor of business law for the University of Maryland-Asian Division, and is first vice president of the Okinawa Bench and Bar Association.

1981

Anna Wilson Fishel has been a sales associate for a real estate business firm since January 1988. She and her husband, Dan, were expecting their fourth child in October.

Jeffrey R. Usher and family are moving to Columbus, Ind., where he will be corporate counsel for Cummins Engine Co., Inc. Jeffrey is responsible for the company's labor relations.

David P. Sousa and **Bettie Kelley Sousa** announce the birth of their first child, Michael David, born December 30, 1987. David is a partner with Young, Moore, Henderson & Alvis, P.A.; and Bettie is a partner with Smith, Debnam, Hibbert & Pahl in Raleigh.

Julia Hines Turner was recently promoted to senior attorney for P & C Legal, Integon Corporation. She has worked at Integon since January 2, 1987.

1982

Gary K. Joyner has been named chairman of the Young Lawyers Division of the North Carolina Bar Association. He primarily practices real estate law in the Raleigh offices of Petree, Stockton & Robinson.

Nancy Beasley Lamb has been assistant district attorney for the seven-county First Judicial District in North Carolina since 1984. The district's home office is in Elizabeth City. Lamb and her husband, Zee, also had their first child on February 6, 1988: Zee Robert. Welcome to the world!

Urs R. Gsteiger has joined Petree, Stockton & Robinson in Winston-Salem. He was previously an attorney in the United States Army, and was most recently officer-in-charge of Butzbach Law Center in Butzbach, West Germany.

Christine L. Myatt is now practising with Adams, Kleemeier, Hagan, Hannah & Fouts in Greensboro. Her practice involves litigation, corporate law and bankruptcy.

Michael A. Sabiston has left private practice and become an assistant district attorney in Judicial District 19-B, based in Troy, N.C. When not prosecuting cases, he also drives a race car at Asheboro's Caraway Speedway.

James A. Stockton practices corporate and tax law in Orlando. He was married November 21, 1987.

Earl F. Wall is a corporate attorney for Integon Insurance, serving as vice president and general counsel for Integon Mortgage Guaranty Corp. He and his wife, Donna, have a three-year-old son, Jason Barrett, and a daughter named Meredith Swanne born April 11, 1988. Congratulations!

1983

Michael L. Roberson is practicing with Bloom & Greene Co., L.P.A., in Cincinnati, Ohio. The firm specializes in insurance defense, personal injury, medical malpractice, products liability and general liability. He is a member of the Anderson Township Board of

Zoning Appeals. Roberson and his wife, Christy, have two sons: Ty Michael and Lee Arden.

Gregory R. Hayes is a new associate with Curt J. Vaught, P.A. (J.D. '76), in Hickory. He was an assistant district attorney from 1983 to August 1988.

1984

Nancy Stover Davenport practices general law and insurance defense with Pope, McMillan, Gourley, Kutten & Parker in Statesville. She and her husband, James, announce the birth of their daughter, Kathryn Stover, on May 13, 1988.

1985

Ralph L. Gilbert III is a partner with Bridges, Morgan & Gilbert, P.A., in Shelby. The firm practices general law. Gilbert is also president of the board of directors of the Life Enrichment Center, an adult day health center. He married Alison Newton Campbell on April 16, 1988.

Rhonda S. Kahan is with Rivkin, Radler, Dunne & Bayh in Uniondale, New York. She practices environmental law, representing corporate clients and property owners on environmental issues.

J. Coburn Powell has a general law practice in Whiteville. His firm is Powell & Powell Attorneys. He and his wife announce the birth of their second child, Anne Claire, on July 18, 1988.

1986

Jennifer Allen is a litigator with Womble, Carlyle, Sandridge & Rice in Winston-Salem. She married Theodore P. Labosky Jr. on April 9, 1988.

Julie A. Davis is an associate with Patton, Boggs & Blow in Greensboro. She practices civil litigation. Davis married Bob King (J.D. '88) in October 1987, an associate with Brooks Pierce McClendon Humphrey & Leonard in Greensboro.

Paul T. Flick has a general litigation practice with Jordan, Price, Wall, Gray & Jones in Raleigh. The practice includes communicty association and consumer law. Flick is on the board of directors of Make-A-Wish Foundation of Eastern North Carolina, and is on the customer arbitration board of the North Carolina region of Chrysler Motors Corp., serving as a consumer advocate.

Joal R. Hall has become an associate in the Washington, D.C., office of Heron, Burchette, Ruckert & Rothwell.

Mark Holloway is an associate in the tax department of Blank, Rome, Comisky & McCauley in Philadelphia. He is also pursuing an LL.M. in taxation on a part-time basis from the Villanova Law School.

Tamara Ward has been admitted to practice before the United States Patent & Trademark Office in Arlington, Va. She is an attorney with the Navy Patent Department.

Robert M. Pitkin practices general commercial litigation with Stinson, Mag & Fizzell in Overland Park, Kan.

1987

Alan C. Lee is general counsel and vice president for the Benton Mortgage Company, an FHA multi-family co-insurance lender, in Knoxville. He married Tara Blake in April, 1988.

W. Glenn Viers has joined Alston & Bird in Atlanta as a labor lawyer. He recently completed a clerkship with the Eleventh Circuit Court of Appeals.

Julia S. Davison is with Currie & Kendall, P.C., in Midland, Mich. Her practice involves real estate, commercial litigation and domestic relations.

Richard J. Colella and Laura B. Cimino were married June 18, 1988 in Pocantico Hills, N.Y. They will live in Dallas

Richard L. Crouse has formed the real estate consulting firm of Richard L. Crouse & Associates, Inc., in Winston-Salem.

1988

Dan Bryson is an associate with Maupin, Taylor, Ellis & Adams in Raleigh.

Robert J. D'Cruz is practicing commercial litigation with Hunter, MacLean, Exley & Dunn, P.C., in Savannah, Ga.

Robin E. Shea, formerly Robin Foreman, has joined Petree, Stockton & Robinson in Winston-Salem.

Patrick G. Vale has joined Petree, Stockton & Robinson in Winston-Salem.

Scott Williamson recently won the $500 First Prize in the Nathan Burkan Memorial Competition. The competition is sponsored by the American Society of Composers, Authors & Publishers in New York. Williamson won top honors with his essay, "Copyright Protection of Computer Audiovisual Display Screens: Exploring the Computer Program Copyright." Williamson is a captain in the U.S. Air Force and is stationed with his family at Dyess Air Force Base in Abilene, Texas.

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